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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. ~~147~~ 2

TIMOTHY CASE, RECEIVER OF THE GREEN BAY AND MINNESOTA RAILROAD COMPANY, APPELLANT,

vs.

DAVID M. KELLY, HENRY KETCHUM, GEORGE HILES, AND THE ARCADIA MINERAL SPRING COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF WISCONSIN.

FILED OCTOBER 2, 1884.

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1 UNITED STATES OF AMERICA, *Eastern District of Wisconsin*, } ss:

Circuit Court of the United States for the Eastern District of Wisconsin.

At a stated term of the circuit court of the United States for the eastern district of Wisconsin, begun and held according to law at the city of Milwaukee, in said district, on the first Monday (being the first day) of January, A. D. 1883—present, the Honorable John M. Harlan, associate justice of the Supreme Court of the United States, assigned to this circuit, presiding, and the Hon. Charles E. Dyer, district judge; also present, Henry Fink, marshal; Edward Kurtz, clerk—among other, the following proceedings were had, to wit:

TIMOTHY CASE, Receiver of the Green Bay & Minnesota Railroad Company, Complainant,
vs.
DAVID M. KELLY, HENRY KETCHUM, GEORGE HILES, & The Arcadia Mineral Spring Company, Defendants. } In Equity.

Be it remembered that heretofore, to wit, on the third day of July, A. D. 1879, came the above-named complainant, by his solicitors, Messrs. E. C. & W. C. Larned, and filed his bill of complaint against the above-named defendants as follows, to wit:

2 *Bill of Complaint.*

In the Circuit Court of the United States for the Eastern District of Wisconsin. In Equity.

To the judges of the circuit court of the United States for the eastern district of Wisconsin:

Your orator, Timothy Case, receiver of the Green Bay & Minnesota Railroad Company, who sues in behalf of said railroad company, brings this his bill against David M. Kelly, Henry Ketchum, George Hiles, all citizens of the State of Wisconsin, and The Arcadia Mineral Spring Company, a corporation created by the laws of the State of Wisconsin and established at Arcadia, in said State, defendants.

And thereupon your orator complains and says that on the 12th day of April, A. D. 1866, the said Green Bay & Minnesota Railroad Company, under the name of the Green Bay & Lake Pepin Railway Company, was duly incorporated by an act of the Legislature of Wisconsin, approved on the said April 12th, 1866, and that the name of said railroad company was subsequently changed, in conformity with the law of the State of Wisconsin, to the Green Bay & Minnesota Railroad Company.

On the 23d day of January, A. D. 1878, in a certain suit in chancery in this court, in which The Farmers' Loan & Trust Com-

pany was complainant and the Green Bay and Minnesota Railroad Company was defendant, by a certain decretal order entered in said cause your orator, Timothy Case, was appointed receiver of the said railroad company and of all the property of the said company, real and personal, and was duly qualified as such receiver, and entered into the possession, control, and management of said railroad and all the property thereof.

And your orator, said Timothy Case, receiver, was by the said decretal order empowered and directed to take possession of the road-bed, lands, right of way, and all the other property and rights whatsoever of said Green Bay & Minnesota Railroad Company wherever the same might be found, and with power to bring
3 such suits in the name of said railroad company as he should be advised by counsel to be necessary and proper in the discharge of the duties of his office and for acquiring, securing, and protecting the assets, franchises, property, and rights of the said railroad company.

And it was by the said decretal order ordered that the said Green Bay & Minnesota Railroad Company, or whoever might have possession thereof, should deliver over to said receiver all the property, real and personal, wheresoever found of said railroad company, and all contracts for the purchase of land, and all other equitable interests which belonged to or were held in trust for said railroad company or in which it had any beneficial interest.

And your orator further shows unto your honor that the said railroad company previous to your orator's appointment as such receiver had laid out, constructed, and operated a line of railroad from the city of Green Bay, in the county of Brown, in said State of Wisconsin, through the counties of Brown, Outagamie, Waupaca, Portage, Jackson, Trempealeau, and Buffalo to the terminus of said road at Eastmoor, on the east bank of the Mississippi river, in said county of Buffalo, in said State of Wisconsin; that a very large proportion of the right of way of said railroad for the whole extent of said line was, as your orator is informed and believes, donated to the said railroad by the owners of the lands through or adjoining which said railroad was laid out, the consideration for such donations being in every case the value to said donating party of the establishment of said line of railroad through or adjacent to the lands of such owner.

That along the line of said railroad depots and stations were established at various points and places deemed most desirable and advantageous for the interests of said railroad company, the lands for such depot grounds and other property useful in connection therewith being in most cases donated by the owners of such property, the consideration for such donation being the advantages to accrue to such donating parties by the establishment of such depot on or near the property of such party.

The said defendant Ketchum was appointed the president of the said railroad company in or about the year 1871, and served as such president until April, 1878.

That the said defendant Kelly was the vice-president and gen-

eral manager of said railroad company in or about the month of January or February in the year 1872, and continued to act in such capacity until December 28, 1877.

That the said defendant Hiles was the partner of said Kelly and Ketchum in various contracts for the construction of said railroad, and that said Hiles and Kelly and Ketchum acted together in the obtaining and acquiring lands for said railroad company for its right of way and depot grounds along the line of said railroad during the said year 1872 and following years, and especially in obtaining the land and property hereinafter in this bill more specifically mentioned and described; that it was the duty of said Ketchum and Kelly as the officers and agents of said railroad company to obtain the title of all the right of way required for said road and for all property needed for depots, depot grounds, or other property for such railroad company on the best terms possible, and in all such transactions to act solely for the benefit and advantage of said railroad company and not for their own private advantage, and to take the title to all property purchased and acquired for such
4 right of way, depot, or other railroad purposes from any person or persons, or which should be donated by any other person or persons for any such purposes, in the name of said railroad company; and if the title to the same or any part thereof was taken by them or either of them in the name of the said defendants or of either or of any or all of them, to hold the title to the same as trustees of said railroad company, and for the sole use and benefit of said railroad company.

And your orator charges that the said defendants, Ketchum and Kelly, have no right to take title to any property acquired by them for the right of way, depot grounds, or for any other purposes in connection with said railroad, in their own names or for their own benefit, and that all property so acquired by them, the title to which is vested in their names or in the name of either one of them, is held by them as trustees of said railroad company, and the said receiver of said railroad company is entitled to have the title to all of said property conveyed to him as such receiver by deed from said defendants, and it is the duty of said defendants to execute a conveyance to your orator of all such property.

And your orator further shows unto your honor that on or about the 20th day of October, 1875, the said defendants, Henry Ketchum and George Hiles, obtained a deed from J. A. Briggs and wife to all that part of the N. ½ of the N. E. ¼ of the S. W. ¼ of sec. 32, t'p 21, range 9, lying north of Main street, in the village of Arcadia, and east of the railroad of said company.

And that on the 22d day of August, 1878, the said defendants, Kelly, Ketchum, and Hiles, obtained a deed of that date from Ebenezer Thurston and wife of the N. W. ¼ of the S. E. ¼ of sec. 16, t'p 21, range 7, in the village of Blair, containing forty acres.

And on the day and year last aforesaid the same defendants obtained from Duke Porter a deed of that date of the right of way covered by the Green Bay & Lake Pepin Railway Company, one hundred feet in width, being fifty feet each side of the center line of

said railroad, and all the land lying on the north side of said railroad line in the N. E. ¼ of the S. E. ¼ of sec. 16, t'p 21, range 7, containing forty acres.

And your orator further charges, upon information and belief, that the said defendants, Kelly, Ketchum, and Hiles, or one or more of them, have obtained the title, from parties to your orator at present unknown, of the following-described lands, to wit:

The E. ½ of N. E. ¼ sec. 10, t'p 21, R. 9.
The S. W. ¼ of N. E. ¼ of sec. 15, t'p 21, R. 9.
The E. ½ of N. W. ¼ of sec. 15, t'p 21, R. 9.
The W. ½ of S. E. ¼ of sec. 15, t'p 21, R. 9.
The S. E. ¼ of N. W. ¼ sec. 28, t'p 21, R. 9.
The S. E. ¼ of S. W. ¼ sec. 28, t'p 21, R. 9.
The S. W. ¼ of S. E. of sec. 29, t'p 21, R. 9.

And your orator further charges that on or about the — day of August, 1873, the said defendants, Kelly, Ketchum, and Hiles, obtained from J. A. Briggs and wife a deed of the following-described property, viz.:

The W. ½ of N. E. ¼ sec. 32, t'p 21, R. 9 W., 80 acres.
The N. W. ¼ of S. W. ¼ sec. 32, t'p 21, R. 9, 40 acres.
The S. W. — of N. W. — sec. 32, t'p 21, R. 9, 40 acres.
The N. ½ of N. E. ¼ of S. W. ¼ sec. 32, t'p 21, R. 9, 20 acres.
And ten acres off the east side of the S. E. ¼ of N. W. ¼ sec. 32, t'p 21, R. 9 W.

5 And afterwards same parties obtained a deed from Mrs. J. A. Briggs of the N. W. ten acres of the S. E. ¼ of said sec. 32, t'p 21, R. 9, and of J. A. Briggs and wife, Nov. 3, 1873, all of S. E, ¼ of N. W. ¼ sec. 32, t'p 21, R. 9, lying south of the Trempealeau river, and all of N. E. ¼ of N. W. ¼ north and west of railroad track.

And your orator further shows unto your honor that the said defendant Kelly has acquired title to lots 4 to 12 inclusive, in block 13, and to all of blocks forty-three (43), forty-five (45), and forty-six (46), in the town of Seymour, in the county of Outagamie, in that part of the S. E. ¼ of the N. E. ¼ of sec. 32, in t'p 24, R. 18 E., bounded as follows: Commencing at a point 333 feet west of the N. E. corner of said S. E. ¼ of the N. E. ¼ of section thirty-two (32), thence west forty (40) rods, thence south twenty (20) rods, thence east forty (40) rods, thence north twenty (20) rods to the place of beginning, containing five (5) acres of ground.

Also, to five acres of land used for depot purposes in and about the depot or station of the said Green Bay & Minnesota Railroad Company, and upon which such depot and station building is situated, at Seymour, in the said county of Outagamie.

And your orator further shows unto your honor that the said Kelly acquired title on or about the 27th day of June, 1877, to forty acres of land by deed from L. G. and B. H. Merrill, of that date, viz.: S. W. ¼ of the S. W. ¼ of sec. 22, t'p 23, R. 4 W.

That the consideration given for the property conveyed by the said last-named deed was the erection of a depot at or near said property and of a lot donated for church purposes, and was furnished by said railroad company.

And your orator further shows unto your honor that the said Kelly has acquired title to the N. W. ¼ of the N. E. ¼ of sec. 21, t'p 23, R. 13, containing forty acres; and also lots 1 to 17, in railroad addition to the village of Manawa, in the county of Waupaca, in said State.

And your orator, upon information and belief, states and charges that all of said property in said towns of Seymour, Merrillan, Manawa, and Blair, and in said sections 32, 23, and 21, above described, was acquired by said Kelly for the use and benefit of the said railroad company; that the consideration of the same was given by said railroad company, and that the title to the said lots and lands and every part thereof, although nominally vested in the said Kelly, is in equity vested in the said railroad company; and said Kelly is in truth and in fact the trustee of said railroad company as to all of said property and ought to be required by decree of this court to convey all of said lands to your orator as such receiver for the use and benefit of the said railroad company and its creditors.

And your orator further shows unto your honor that the said mortgages described in the said foreclosure suit of the said Farmers' Loan and Trust Company against the Green Bay & Minnesota Railroad Company, conveyed to the said Farmers' Loan and Trust Company, in trust, to secure the bonds in said mortgages described, all and singular the lands, rights of way, and all the real and personal property then belonging to the said railroad company, and all such real and personal property and estate as the said railroad company might thereafter acquire, of every kind, nature, and character, in the said State of Wisconsin, all the issues and profits thereof,
6 and all the rights to receive or recover the same, and all railway stations and depots, with all the appurtenances necessary or convenient for the same.

And your orator charges that all of the lands above mentioned and described were obtained by the said parties for the use and benefit of the said railroad company and in trust for the said company; that the consideration for the same was given by the said railroad company and the grantees in the several conveyances of the said property made to said defendants or either of them intended to convey the said property to the said railroad company for its sole and exclusive use and benefit, and the conveyances were made to the said parties, who were at said time the officers and agents of said railroad company, with the understanding and upon the express assurance made by the grantees at the time of receiving such title, as your orator is informed and believes, that they, said grantees, were acting for said railroad company, and that the title to said property then made in the name of said defendants or some of them would inure to the benefit of the said railroad company.

That it is not in the power of your orator to give an accurate statement of all the other lots, tracts, and parcels of land belonging to said railroad company to which the said defendants or some of them have acquired title in trust for said company or for the use and benefit of said railroad company, because the same have, as your orator is informed and believes, been in some cases taken

secretly and the title to the same in some cases not secured, and in other cases the title thereto has been taken in the name of other persons than said defendants.

But your orator charges and insists that the title to all the land included within the right of way of said railroad company throughout the entire line of said road, and of all lands obtained for depots, depot grounds, and other uses and purposes of said road, and to all lands along the line of said railroad or contiguous to the same, or included in any of the towns, villages, or depot sites laid out by said defendants or any of them along said railroad which has been obtained by the said defendants or either of them from any person or persons by gift, grant, purchase, or agreement of any kind, whether the title to such property has been taken in their own name or in the name of either one or more of them, or in the name of any other party or parties; is in equity and good conscience the property of the said railroad company, and that the said property, in whomsoever the title thereto may be vested, belongs to said railroad company; and the said defendants and any and all other persons holding title to the same or any part thereof at the instance and by the request of said defendants or some of them hold the same in trust for the use and benefit of said railroad company, and are each and every of them chargeable with notice of the rights and equities of said railroad company, and are in equity bound to account to your orator as such receiver for the use and benefit of said railroad company for all gains, profits, and moneys received or obtained out of or for the use, sale, or disposition of any of the lands or property so held or obtained by them or either of them as aforesaid, and make and execute to your orator good and sufficient conveyance or conveyances of all such lands, property, and interests so acquired or held by them or either of them as aforesaid; that the same may be held, used, and appropriated by your orator under the direction of this court to the use and benefit of said railroad company and the creditors thereof.

7 And your orator further shows unto your honor that the said defendant Hiles has conveyed portions of the property above described to the said defendant, The Arcadia Mineral Spring Company, especially by a conveyance executed by said George Hiles and wife to said Arcadia Mineral Spring Company, dated February 17, 1879, reference to which deed and the record thereof is hereby made for a more full description of the property thereby conveyed; but your orator shows unto your honor that the said Hiles is the president and chief manager of the said Arcadia Company, and that said company is chargeable with full knowledge and notice of all the rights, interests, and equities of the said Green Bay & Minnesota Railroad Company in the premises so conveyed, and that the said Arcadia Company holds the title to all said property so conveyed to it by said Hiles in trust for said railroad company, and that your orator as receiver of said railroad company is entitled to have and receive from said Arcadia Company a conveyance of all of the said property conveyed to it by said deed as aforesaid.

And your orator further shows unto your honor that the said defendant Kelly, on or about the 15th day of February, 1875, conveyed to said defendant, George Hiles, a large amount of the property so obtained from said Briggs, Thurston, and Porter.

But your orator charges that said Hiles was a partner with said Kelly in said land transactions, and that said Hiles had full notice of all the rights, interests, and equities of the said railroad company in all the property so deeded to him by said Kelly at the time of such conveyance to him by said Kelly and for a long time prior thereto, and that said deed was wholly without consideration, and that all of said property so deeded by said Kelly to said Hiles is subject, in the hands of said Hiles, to all the rights and equities of the said railroad company, and the said Hiles holds the same as trustee of said company and for its use and benefit, and is bound to make a conveyance of said property to your orator for the use and benefit of said railroad company and its assigns.

And your orator, upon information and belief, further charges that the said defendants, Kelly, Ketchum, and Hiles, have sold portions of the property deeded to them for the use and benefit of said railroad company, and have received large sums of money and notes secured by mortgages upon portions of said property and other considerations for such sales; all of which money, securities, and considerations are in fact the property of said railroad company, and should be paid by said defendants to your orator as such receiver for the use and benefit of such railroad company.

And your orator further shows unto your honor that on the 17th day of March, 1879, the said Kelly conveyed to one August Geehr one lot in the said town of Seymour for the sum of $75, of which he received $25 in cash at the time of said sale, which said lot is, as your orator is informed and believes, one of the lots obtained by the said Kelly in trust for said railroad company, and that the said Kelly has appropriated to his own use the said amount received in cash without accounting to said railroad company or your orator for the same, and your orator fears that he will sell and convey other of the said lots or tracts so obtained and held by him for the use and benefit of said railroad company and appropriate the proceeds of such sales to his own use and benefit without accounting to your orator for the same.

In consideration of the premises, and inasmuch as your orator has no sufficient remedy in the premises save in this, your honor's
8 court of equity, where matters of this kind are properly relievable and cognizable, your orator prays that said defendants hereinbefore named may be made parties defendant to this suit, and be required to answer all and singular the premises aforesaid fully and particularly, but not under oath, the oath of said defendants and of each of them being hereby expressly waived.

And that the said defendants may be required by the order of this court to appear before one of the masters or commissioners of this court or such other person as this court may appoint and submit to an examination under oath touching the matters charged in this bill, and upon such examination may be required to produce all

such books, deeds, documents, and writings as they shall be required to produce by your orator, and which are in their possession or control, relating to the matters and things herein set forth and alleged.

And that the said defendants may be required by a decree of this court to convey, by good and sufficient deed or deeds, to your orator, as such receiver, all lots, lands, right of way, depot and depot grounds, or other property obtained or acquired by the said defendants or either of them, as aforesaid, and which are held by them for the use and benefit of said railroad company, as aforesaid.

And that an account may be taken before said master, commissioner, or other officer of all monies, notes, bills, choses in action, or other property received by the said defendants or either of them for the sale, lease, or other disposition of any property, real or personal, received, acquired, or obtained by the said defendants or any or either of them in trust for or for the use and benefit of said Green Bay & Minnesota Railroad Company.

And may it please your honor to grant unto your orator a writ of injunction to be directed to the said David M. Kelly, Henry Ketchum, George Hiles, and the Arcadia Mineral Spring Company, restraining them and each of them, until the further order of this court, from conveying, incumbering, or otherwise disposing of any of the said land or property specially in the said bill set forth or described, and restraining them from conveying or incumbering or disposing of any lands which constitute any part of the right of way of the said railroad, or are included within or are adjacent to any depot grounds, station grounds, cattle yards, or otherwise used or occupied for said railroad purposes, which are contiguous to said road and obtained for the purposes of said road, and the title to which property is vested in said defendants or either one or more of them.

And may it also please your honor to grant unto your orator a writ of subpœna, issued out of and under the seal of this honorable court, to be directed to the said David M. Kelly, Henry Ketchum, George Hiles, and the Arcadia Mineral Spring Company, commanding them and each of them, at a certain day and under a certain penalty therein to be inserted, personally to be and appear before this honorable court, then and there to answer all and singular the premises, and to stand to and abide by and perform such order and decree therein as to your honors shall seem agreeable to equity and good conscience.

And may it also please your honors to grant unto your orator such other and further relief as the circumstances of this case may require and as shall seem to your honors meet and agreeable to equity and good conscience.

And your orator will ever pray, etc.

E. C. & W. C. LARNED,
Sol'rs for T. Case, Receiver.

THEO. G. CASE, *Of Counsel.*

9 EASTERN DISTRICT OF WISCONSIN,
City of Green Bay, County of Brown:

On this 30th day of June, 1879, before me personally appeared the above-named Timothy Case, receiver of the Green Bay & Minnesota Railroad Company, and made oath that he has heard read the above bill subscribed by him and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated to be on his information or belief, and as to those matters he believes it to be true.

TIMOTHY CASE, *Receiver.*

Subscribed and sworn to before me this 30th day of June, 1879.
W. J. ABRAMS,
Notary Public, Brown County, Wis.

Filed July 3, 1879.

10 And same day (July 3, 1879) the said complainant, by his solicitors, entered in the order and rule book a rule that the defendants show cause by Monday, the 14th day of July instant, at ten o'clock in the forenoon, why an injunction should not be issued according to the prayer of the bill on file.

Whereupon a subpœna issued returnable the first Monday of August next, with said order at the foot thereof, as follows:

11 UNITED STATES OF AMERICA, } *ss:*
Eastern District of Wisconsin, }

[SEAL.] The President of the United States of America to David M. Kelly, Henry Ketchum, George Hiles, and The Arcadia Mineral Spring Company, Greeting:

You are hereby commanded that you personally appear before the judges of the circuit court of the United States of America for the eastern district of Wisconsin, in our court of chancery, in and for the district aforesaid, on the first Monday of August next ensuing, at Milwaukee, to answer to a bill of complaint exhibited against you in our said court by Timothy Case, receiver of the Green Bay & Minnesota Railroad Company, and to do further and receive what our said court shall have considered in that behalf; and this you are not to omit under the penalty which may ensue.

This process of subpœna is directed to the marshal of this district, who is hereby commanded to serve the same upon the said David M. Kelly, Henry Ketchum, George Hiles, and The Arcadia Mineral Spring Company, if to be found in his district, and due return thereof make.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the city of Milwaukee, in said district, this third day of July, in the year of our Lord one thousand eight hundred and seventy-nine, and of our Independence the one hundred and third.

EDWARD KURTZ, *Clerk.*

E. C. & W. C. LARNED, *Solicitors.*

And it is ordered by our said court that the said David M. Kelly, Henry Ketchum, George Hiles, and The Arcadia Mineral Spring Company, the defendants aforesaid, do enter their appearance in this suit in the clerk's office on or before the day and time at which this subpœna is returnable as aforesaid, otherwise the bill filed may be taken as confessed; and it is further ordered that they show cause by Monday, the fourteenth day of July instant, at ten o'clock in the forenoon, why an injunction should not be issued according to the prayer of the bill on file.

12 *Return to Subpœna.*

Served on the within-named Henry Ketchum at New London, Waupaca county, by leaving a copy of this subpœna at his usual place of abode with an adult person, a member of the family, this eighth day of July, A. D. 1879, and, after due search and inquiry, I was unable to find the within-named David M. Kelly, George Hiles, and the Arcadia Mineral Spring Company in my district.

HENRY FINK, *Marshal*,
By J. D. WILLIAMS, *Deputy*.

Fees, $12.56.

13 JULY 21, 1879.

"On motion of E. C. & W. C. Larned, complainant's solicitors, it is ordered that the defendants, David M. Kelly, George Hiles, and The Arcadia Mineral Spring Company, show cause on the 26th day of July, A. D. 1879, at eleven o'clock in the forenoon, why an injunction should not be issued according to the prayer of the bill on file."

And same day, upon application of complainant's solicitors, it is ordered by the district judge that until the hearing and determination of the said order to show cause, the defendants, David M. Kelly, George Hiles, and The Arcadia Mineral Spring Company, be enjoined and restrained from conveying, encumbering, or otherwise disposing of any of the lands or property specially set forth in said bill of complaint, or any lands which constitute any part of the right of way of the Green Bay and Minnesota Railroad Company, or are included within or are adjacent to any depot grounds, station grounds, cattle-yards, or otherwise used or occupied for said railroad purposes, which are contiguous to said road and obtained for the purposes of said road, and the title to which property is vested in said defendants or either one or more of them.

14 And same day came the complainant, by his solicitors, and filed this *præcipe* for a duplicate subpœna, directed to the marshal of the western district —, as follows:

U. S. Circuit Court, E. District of Wisconsin. In Chancery.

TIMOTHY CASE, Receiver G. B. & M. R. R.,

vs.

DAVID M. KELLY, HENRY KETCHUM, GEORGE HILES, & THE ARCADIA MINERAL SPRING COMPANY.

Please issue a subpœna, directed to the marshal of the western dis-

trict of Wisconsin, commanding him to summon George Hiles and the Arcadia Mineral Spring Company to appear and answer the bill of complaint in the above cause.

E. C. & W. C. LARNED,
Complainant's Sol'rs.

Mr. E. Kurtz, clerk.

Whereupon a duplicate subpœna issued with said orders to show cause and injunctional order endorsed thereon as follows:

15 UNITED STATES OF AMERICA, } ss:
Eastern District of Wisconsin, }

The President of the United States of America to David M. [SEAL.] Kelly, Henry Ketchum, George Hiles, and The Arcadia Mineral Spring Company, Greeting:

You are hereby commanded that you personally appear before the judges of the circuit court of the United States of America for the eastern district of Wisconsin, in our court of chancery in and for the district aforesaid, on the first Monday of August next ensuing, at Milwaukee, to answer to a bill of complaint exhibited against you in our said court by Timothy Case, receiver of the Green Bay & Minnesota Railroad Company, and to do further and receive what our said court shall have considered in that behalf, and this you are not to omit under the penalty which may ensue.

This process of subpœna is directed to the marshal of this district, who is hereby commanded to serve the same upon the said David M. Kelly, Henry Ketchum, George Hiles, and the Arcadia Mineral Spring Company, if to be found in his district, and due return thereof make.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the city of Milwaukee, in the said district, this third day of July, in the year of our Lord one thousand eight hundred and seventy-nine, and of our Independence the one hundred and third.

EDWARD KURTZ, *Clerk.*

E. C. & W. C. LARNED, *Solicitors.*

It is ordered by our said court that the said David M. Kelly, Henry Ketchum, George Hiles, and The Arcadia Mineral Spring Company, the defendants aforesaid, do enter their appearance in this suit in the clerk's office on or before the day and time at which this subpœna is returnable as aforesaid; otherwise the bill filed may be taken as confessed.

And it is further ordered that they show cause by Monday, the fourteenth day of July instant, at ten o'clock in the forenoon,
16 why an injunction should not be issued according to the prayer of the bill on file.

July 21, 1879.—"On motion of E. C. & W. C. Larned, complainant's solicitors, it is ordered that the defendants, David M. Kelly, George Hiles, and The Arcadia Mineral Spring Company, show

cause, on the 26th day of July, A. D. 1879, at eleven o'clock in the forenoon, why an injunction should not be issued according to the prayer of the bill on file."

And, upon application of complainant's solicitors, it is ordered by the district judge that until the hearing and determination of the said order to show cause the defendants, David M. Kelly, George Hiles, and The Arcadia Mineral Spring Company, be enjoined and restrained from conveying, encumbering, or otherwise disposing of any of the lands or property specially set forth in said bill of complaint, or any lands which constitute any part of the right of way of the Green Bay & Minnesota Railroad Company, or are included within or are adjacent to any depot grounds, station grounds, cattle yards, or otherwise used or occupied for said railroad purposes which are contiguous to said road and obtained for the purposes of said road, and the title to which property is vested in said defendants or either one or more of them.

Endorsed as follows:

I, Edward Kurtz, clerk of the circuit court of the United States for the eastern district of Wisconsin, do hereby certify that the within is a true copy of a subpœna sued out of said court.

Dated Milwaukee, July 21, 1879.

EDWARD KURTZ, *Clerk.*

17 *Return to Duplicate Subpœna.*

"I hereby depute N. D. Comstock to serve and return this writ.
"July 24, 1879.

"F. W. OAKLEY, *U. S. M.*"

Served on the within-named The Arcadia Mineral Spring Company by delivering to E. J. Nye, the secretary of said company, personally a copy of the within subpœna this 25th day of July, 1879, and served on the within-named George Hiles by delivering to him personally a copy of the within sub'a this the 25th day of July, 1879.

F. W. OAKLEY, *U. S. M.*,
By N. D. COMSTOCK,
Special Dep'y.

Subscribed & sworn to before me this 25th day of July, 1879.

DOUGLAS ARNOLD,
Justice of the Peace.

July 28, 1879.—And now comes the complainant herein, by E. C. & W. C. Larned, his solicitors, and comes the defendant, Henry Ketchum, by O. F. Weed, his solicitor, and having heard argument and being fully advised in the premises, on motion of E. C. & W. C. Larned, complainant's solicitors, it is ordered that the defendant, Henry Ketchum, be enjoined and restrained until the further order of this court from conveying, transferring, or encumbering any of

the property specifically mentioned and described in the bill of complaint herein. Leave is given said defendant to move to dissolve this injunction at any time upon or after the filing of an answer by him to said complaint.

(Signed) CHAS. E. DYER,
Dist. Judge.

18 And on application of the defendant, Henry Ketchum, by his counsel, Mr. O. F. Weed, it is ordered by the district judge that the time for said defendant to answer the bill of complaint herein be extended to the first Monday of November next.

September 1, 1879.—This day came the defendants, George Hiles and The Arcadia Mineral Spring Company, by their solicitor, Mr. L. P. Bowers, and filed their appearance.

September 6, 1879.—Stipulation of the parties that the time for the defendants, George Hiles and The Arcadia Mineral Spring Company, to answer be extended to November 1st, 1879, filed.

October 27, 1879.—This day came the complainant, by his solicitors, and entered in the order and rule book a rule for the defendant, David M. Kelly, to show cause by Monday, the tenth day of November next, at ten o'clock in the forenoon, why an injunction should not be issued according to the prayer of the bill; and also filed his *præcipe* for an *alias* subpœna against said defendant, David M. Kelly.

Whereupon an *alias* subpœna issued against said defendant, David M. Kelly, with order to show cause and injunctional order granted July 21, 1879, endorsed thereon as follows:

19 UNITED STATES OF AMERICA, } *ss:*
Eastern District of Wisconsin, }

The President of the United States of America to David M. [SEAL.] Kelly, impleaded with Henry Ketchum, George Hiles, and the Arcadia Mineral Spring Company, Greeting:

You are hereby commanded that you personally appear before the judges of the circuit court of the United States of America for the eastern district of Wisconsin, in our court of chancery, in and for the district aforesaid, on the first Monday of December next ensuing, at Milwaukee, to answer to a bill of complaint exhibited against you in our court by Timothy Case, receiver of the Green Bay & Minnesota Railroad Company, and to do further and receive what our said court shall have considered in that behalf; and this you are not to omit under the penalty which may ensue.

This process of subpœna is directed to the marshal of this district, who is hereby commanded, as heretofore commanded, to serve the same upon the said David M. Kelly, if to be found in his district, and due return thereof make.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the city of Milwaukee, in the said district, this twenty-seventh day of October, in the year of

our Lord one thousand eight hundred and seventy-nine, and of our Independence the one hundred and fourth.

EDWARD KURTZ, *Clerk.*

E. C. & W. C. LARNED, *Solicitors.*

It is ordered by our said court that the said David M. Kelly, the defendant aforesaid, do enter his appearance in this suit in the clerk's office on or before the day and time at which this subpœna is returnable as aforesaid; otherwise the bill filed may be taken as confessed. And it is further ordered that he show cause, by Monday, the tenth day of November next, at ten o'clock in the forenoon, why an injunction should not be issued according to the
20 prayer of the bill on file.

And, upon application of complainant's solicitors, it is ordered by the court that, until the hearing and determination of the said order to show cause, the said defendant, David M. Kelly, be enjoined and restrained from conveying, encumbering, or otherwise disposing of any of the lands or property specially set forth in said bill of complaint, or any lands which constitute any part of the right of way of the Green Bay & Minnesota Railroad Company, or are included within or are adjacent to any depot grounds, station grounds, cattle-yards, or otherwise used or occupied for said railroad purposes, which are contiguous to said road and obtained for the purposes of said road, and the title to which property is vested in said defendant.

Return to Above Subpœna.

Served on the within-named D. M. Kelly at Green Bay, Wis., by delivering to him personally a copy of this subpœna this 30th day of October, A. D. 1879.

HENRY FINK, *Marshal,*
By W. A. NOWELL, *Deputy.*

Fees, $9.30.

November 24, 1879.—This day came the defendant, George Hiles, by his solicitor, Mr. L. P. Powers, and filed his answer, as follows:

21 *Answer of Geo. Hiles.*

United States Circuit Court, Eastern District of Wisconsin.

TIMOTHY CASE, Receiver of the Green Bay & Minnesota Railroad Company,

vs.

DAVID M. KELLY, HENRY KETCHUM, GEORGE HILES, and THE ARCADIA MINERAL SPRING COMPANY.

The separate answer of Geo. Hiles, one of the above-named defendants, to the bill of complaint of Timothy Case, complainant.

This defendant, now and all times hereafter saving and reserving unto himself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other

imperfections in the said complaint contained, for answer thereto, or unto so much and such parts thereof as this defendant is advised is or are material or necessary for him to make answer unto, *this defendant*, answering, saith that this defendant has been informed, and believes it to be true that the said Green Bay & Minnesota Railroad Company, under the name of the Green Bay and Lake Pepin Railroad Company, was duly incorporated as set forth in said bill of complaint.

And this defendant, further answering, says he believes it to be true that the plaintiff, Timothy Case, was appointed receiver of the said railroad company and the property belonging to the same, but this defendant does not know the same of his own knowledge, nor can this defendant state, as to his belief or otherwise.

And this defendant, further answering, says it may be true for anything this defendant knows to the contrary that the plaintiff, Timothy Case, was by the said decretal order empowered and directed to take possession of the said road-bed, lands, right of way, and all the other property and rights whatsoever of said Green Bay & Minnesota Railroad Company, with power to bring suits as he should be advised, as set forth in the complaint, but this defendant is an utter stranger to all and every such matter and cannot form any belief concerning the same.

And this defendant, further answering, admits that prior to the appointment of the plaintiff as such receiver the said railroad company has constructed and operated a continuous line of railroad from and to the points in that behalf alleged in the complaint, and this defendant believes it to be true that a portion of the right of way of said railroad was donated to the said railroad company by the owners of the lands through which said railroad was laid out; but this defendant does not know of his own knowledge how large or what proportion of the right of way of said railroad was so donated, or what the consideration for such donation was; neither can this defendant state as to his belief or otherwise.

22 And this defendant, further answering, admits that along the line of said railroad depots or stations were established at various points and places deemed most desirable and advantageous for the interest of said company, but this defendant cannot state of his own knowledge whether the land for such depot grounds and other property useful in connection therewith was in most cases donated by the owners of such property in consideration of the advantages accruing to such donating parties by the establishment of such depot grounds near the property of such party, nor can this defendant state, as to his belief or otherwise, in regard thereto.

And this defendant, further answering, says that he has been informed and believes that his codefendants, Ketchum and Kelly, were, respectively, president and general manager of said railroad at or about the time in that behalf stated in the complaint, but of the time of their election or appointment as such officers or term of service as such this defendant cannot state, his only means of knowledge in regard thereto being the fact that during the construction of said railroad, or the greater part thereof, the said

Ketchum acted in the capacity of president and the said Kelly as general manager, and beyond these facts this defendant has no knowledge or information.

And this defendant, further answering, denies that he was the partner of codefendants, the said Ketchum and Kelly, or either of them in any contracts for the construction of said railroad or for the construction of any part thereof; that this defendant was himself a contractor with said company for the construction of a considerable portion of its said road, but neither the said Ketchum or Kelly has any pecuniary interest therein.

This defendant, further answering, denies that he and the said Ketchum and Kelly acted together in obtaining the right of way and depot grounds along the line of said railroad during the year 1872 or at any other time except as hereinafter admitted. In several instances the right of way was not secured by said company as fast as needed by this defendant in the execution of his contract for the construction of the road, and in some such cases this defendant, by and at the request of said Ketchum and Kelly, assisted in obtaining such rights of way, and in some instances paid money therefor, but all sums paid by me for such right of way *was* refunded me, and all services rendered by me in obtaining such right of way, &c., *was* paid me by said company, and this defendant had no other interest in acquiring said right of way.

And this defendant, further answering, admits that on or about the 20th day of October, 1875, he and his codefendant, Henry Ketchum, obtained a deed from J. A. Briggs and wife of all that part of the N. ½ of the N. E. ¼ of S. W. ¼ of sec. 32, in t'p 21 N., in range 9, lying north of Main street, in the village of Arcadia, and east of the said railroad; that on or about the 20th day of July, 1873, this defendant obtained from said Briggs and wife a deed of the W. ½ of N. E. ¼, N. W. — of S. W. ¼, S. W. ¼ of N. W. ¼, and all of S. E. ¼ of N. W. ¼, lying east of the Trempealeau river, and ten acres of the N. W. ¼ of S. E. ¼, in the N. W. corner, forty rods square, all in section 32, township 21, range 9 west, two-thirds thereof to this defendant and one-third to said Henry Ketchum; but this defendant alleges that it was agreed and understood before the making of the said deeds that, in consideration of services rendered to said company by this defendant in locating said road
23 and obtaining right of way, *that* he, this defendant, should be permitted to have and take the said interest in said lands by paying such proportion of the cost thereof, and in pursuance thereof this defendant paid to said H. Ketchum the amount so agreed upon, and upon information and belief this defendant denies that the said land or any part thereof was a donation from said Briggs and wife to the said railroad company or to said Ketchum or to the said Ketchum and Kelly.

And that as to the lands described in the complaint as the E. ½ of N. E. ¼, sec. 10, and S. W. ¼ of N. E. ¼, sec. 15, the E. ½ of S. E. ¼, sec. 15, the S. E. ¼ N. W. ¼, sec. 28, the S. E. ¼ of S. W. ¼, sec. 28, and the S. W. — of S. E. —, sec. 29, all in t'p 21 N., R. 9 E, this defendant alleges that he purchased of the said Ketchum one-third

interest therein and paid him therefor; and upon information and belief this defendant alleges that said Ketchum purchased said lands from the State of Wisconsin and received from the State its patent therefor; and upon like information and belief this defendant denies that said lands or any part — were ever acquired by said Ketchum for said railroad company or for its use or that said company has any right, equity, or interest therein; and this defendant, upon information and belief, alleges that said lands were so acquired by said Ketchum before the location of said railroad over, upon, or near the same.

And this defendant, further answering, admits that the defendant, about the time in that behalf stated in the complaint, obtained from Ebenezer Thurston and wife and from Duke Porter deeds of lands therein described; but this defendant alleges that in fact he purchased one-third interest therein before the making of the said deed from said Kelly and Ketchum, paying therefor the sum of $450.00, and thereupon the said deeds were made to all of said defendants to save the trouble and expense of two additional deeds, and this defendant alleges that he purchased the same in good faith, supposing he was obtaining a good title thereto; and this defendant denies that the said lands, except so much thereof as is covered by the right of way, was a donation to said company or made in consideration of the location of the line of said road over the same, such location being in fact made before the execution of said deed; but the defendant alleges that the consideration to said Thurston and Porter for the said deed was the location of the depot of said road near the same and *that* the labor, expense, and influence of these defendants in platting a portion of said lands, recording the same, inducing settlement and emigration thereon and vicinity, improving the same, and building up an important business point there, the said Porter and Thurston having other lands in the vicinity which would be benefited thereby; that said lands were at the time of the execution of said deed of a mere nominal value only, but through and by means of said labor, expense, and influence of these defendants the same has greatly increased in value.

That this defendant disclaims any right, title, or interest in so much of said lands as is embraced in the right of way of said railroad across the same, and is ready and willing and hereby offers to convey his interest therein to the said railroad company whenever requested so to do, and, except as above stated, this defendant denies that any of the lands hereinbefore described or any part thereof were obtained by this defendant for the use and benefit of the said railroad company or in trust for said company; and this defendant denies that the consideration therefor or any part thereof was given by the said railroad company; and this defendant denies that he has, or he and his codefendants or either of them have,
24 acquired title to any lands in trust for said company or for its use and benefit, or to any lands the consideration for which was given or paid by the said company; and this defendant denies that the titles so acquired by this defendant for the benefit or use of

said railroad company has in any case been taken secretly or in the name of any third person.

And this defendant, further answering, says that before the commencement of this action he purchased of his codefendant Kelly all the said Kelly's interests in the lands hereinbefore described, being one-third part thereof, and paid him the full cash value thereof; but this defendant denies that at the time of said purchase, or at any time prior thereto, this defendant had notice of any right, title, or equity of the said railroad company in said lands or any part thereof.

And this defendant, further answering, admits that he has conveyed portions of the property above described to the defendant, The Arcadia Mineral Spring Company, by deed dated February 17, 1879, as stated in said complaint, and that this defendant was, at the time of the execution of said deed, the president and principal manager of said company.

And this defendant, further answering, denies that he was a partner with said Kelly and Ketchum or either of them in any transactions relating to said lands or any part thereof; but this defendant alleges that all the interest he had or has at any time acquired in said lands was purchased by him of said Kelly and Ketchum or one of them, and the consideration thereof paid to them or one of them.

And this defendant admits that portions of said lands have been sold by these defendants or some of them, and the consideration thereof has been received by them or is owing to them, but this defendant denies that the said railroad company or the plaintiff, as receiver thereof, has any interest in the said lands or any part thereof remaining unsold, or in the proceeds of such parts thereof as have been sold.

And this defendant, further answering, denies that the plaintiff is entitled to the relief demanded in the complaint; and he prays the same advantage of his said answer as if he had pleaded or demurred to the said complaint, and prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

L. P. POWERS,
Solicitor for the Defendant, Geo. Hiles.

November 25, 1879.—This day came the defendant, Henry Ketchum, by his solicitor, Mr. G. W. Cate, and filed his answer, as follows:

Answer of Henry Ketchum.

United States Circuit Court, Eastern District of Wisconsin.

TIMOTHY CASE, Receiver of the Green Bay & Minnesota Railroad Company,

vs.

DAVID M. KELLY *et al.*

The separate answer of Henry Ketchum, one of the defendants, to the bill of complaint of Timothy Case, complainant in the above action.

This defendant, now and at all times hereafter, saving and reserving unto himself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complaint contained, for answer thereto, or unto so much and such parts thereof as this defendant is advised is or are material or necessary for him to make answer unto, *this defendant, for* answering, saith:

I. That this defendant has been informed and believes it to be true that the said Green Bay & Minnesota Railroad Company, under the name of the Green Bay & Lake Pepin Railroad Company, was duly incorporated as set forth in said bill of complaint.

II. And this defendant, further answering, says he believes it to be true that the plaintiff, Timothy Case, was appointed receiver of the said railroad company and the property of the said railroad company, as in that behalf charged in the said complaint, but this defendant does not know the same of his own knowledge, nor can this defendant state, as to his belief or otherwise.

III. And this defendant, further answering, says that it may be true, for anything this defendant knows to the contrary, that the defendant, Timothy Case, was by the said decretal order empowered and directed to take possession of the said road-bed, lands, right of way, and all other property and rights whatsoever of said Green Bay & Minnesota Railroad Company, with power to bring suits as he should be advised, as set forth in said complaint, but this defendant is an utter stranger to all and every such matters, and cannot form any belief concerning the same.

IV. And this defendant admits that prior to the appointment of the plaintiff as such receiver the said railroad company had laid out and constructed and operated a continuous line of railroad from and to the points mentioned in the said complaint, and that portions of the right of way of said railroad was donated to said railroad by the owners of the lands through which said road was laid out, and this defendant believes it to be true that the consideration for some of such donations was the supposed value to the party or parties making such donations of the establishment of said line through said lands; but this defendant cannot state of his own knowledge

that such was the sole and only consideration in every such donation, and this defendant cannot state, as to his belief or otherwise, *as to* whether such was the consideration for every such donation.

V. And this defendant, further answering, admits that along said railroad depots or stations were established at places deemed most desirable and advantageous for the interests of said railroad company, and this defendant believes it to be true that in some cases the lands necessary for such depots were donated to said company; but this defendant, by reason of not being in the possession of the records and papers relating thereto, is not able to state of his own knowledge how many and all of such donations, but denies that all the said depot grounds were so donated.

VI. And this defendant, further answering, admits that he was appointed the president of said railroad company about the year 1871 and served as such until the month of December, 1877, and that the defendant Kelly was vice-president and general manager of said railroad company from about the month of April, 1874, until December, 1877.

VII. And this defendant, further answering, denies that the defendants, Kelly, Ketchum, and Hiles, were in partnership in any contracts for the construction of said railroad, or that the defendant Hiles was the partner of said Kelly and Ketchum in any contracts for the construction of said railroad; but this defendant alleges that said Hiles was a contractor in the construction of said railroad and had a contract or contracts therefor in his own name, and did build and construct a large portion of the said line of road, and that this defendant was not a party to or interested in said contracts or the building of said road, except as an officer of said company; that the consideration or contract price for building said road was paid to said Hiles, and no part thereof was ever paid to or received by this defendant or in any manner accounted for by said Hiles to this defendant; that obtaining the necessary right of way was exclusively the duty and business of this defendant and said Kelly as the said officers of said company, and said Hiles was not otherwise interested therein than as contractor for building the road; that it
27 sometimes happened during the construction of said railroad, and perhaps in regard to some of the lands set forth in the complaint, that the grading of the road-bed was in advance of the procurement of the right of way, and in such cases the said Hiles volunteered to assist and did assist in the procurement of the right of way solely for his own benefit and advantage, to prevent loss by reason of delays by the failure of this defendant and said Kelly to take up the right of way as fast as required by the men engaged in grading the road, and that said Hiles' only interest and object in so doing was to prevent his work of grading said road being obstructed as aforesaid.

And this defendant, further answering, says he admits that on or about the 20th day of October, 1875, he and the defendant, George Hiles, obtained a deed from J. A. Briggs and wife to all that part of the N. ½ of the N. E. ¼ of the S. W. ¼ of sec. 32, in t'p 21, R. 9, lying north of Main street, in the village of Arcadia, and east of the said

railroad; but this defendant alleges that the said deed was so executed and delivered in consideration of the payment by this defendant and the defendant George Hiles to the said J. A. Briggs, before the execution and delivery of said deed, of the sum of fifty dollars, which sum was accepted by said Briggs in full consideration for said deed; that said land was so purchased for the use and benefit of this defendant and the defendant George Hiles, and paid for as aforesaid with their money, and was not purchased or acquired for the use of said railroad; that said land was not at the time of said purchase or the making of said deed necessary to the use of said railroad or needed by it for any use or purpose whatever, and said railroad company has not been in the use or occupation of the same or any part thereof.

And this defendant, further answering, admits that on or about the 22nd day of August, 1873, this defendant and the defendants, Hiles and Kelly, obtained a deed of that date from Ebenezer Thurston and wife, of the N. W. ¼ of the S. E. ¼ of sec. 16, T. 21, R. 7; and on or about the same time obtained a deed from Duke Porter of the right of way of said railroad, and all the land lying on the north side of said railroad, in the N. E. ¼ of the S. E. ¼ of sec. 16, T. 21, R. 7; that the said right of way across said land so deeded by the said Porter was a donation to said railroad company, and this defendant is now, and has been at all times since the making of said deed, ready and willing to convey the said right of way to said company, and would have conveyed his interest in the title thereto to said company if he had been requested so to do. But this defendant alleges that the said conveyances from said Thurston and Porter were made after the location of the said railroad across the same, and was not, either in the whole or in part, in consideration of such location; and this defendant further alleges that the said lands were and are situated in the town of Preston, which said town had voted the sum of $25,000 in aid of the said railroad company, upon the condition that a depot should be located in said town; that said lands are at a central point in said town and where the interests of said railroad company and the public would be better subserved by the location of a depot thereon than at any other place in said town on the line of said railroad, and in consideration thereof it was determined by this defendant and the said Kelly, in behalf of said company, to locate said depot in the immediate vicinity of said lands, as being the most eligible place therefor in said town; that at
28 the same time the said Thurston and Porter were the owners of considerable lands in addition to the said lands and adjoining thereto, and were desirous of building up a village and central point of business thereon, and thereupon it was agreed and understood by and between this defendant and said Kelly and said Thurston and Porter that the railroad depot would be located on the land so conveyed by said Thurston; that said Thurston and Porter would convey said lands to these defendants, and that in consideration of such conveyance these defendants would plat the same, or a portion thereof, and use their efforts and influence to build up a village there and induce emigration and settlement at that point; and

thereafter and thereupon said Thurston and Porter did convey said lands to these defendants upon and for no other or further consideration than as above stated, and in pursuance thereof these defendants did cause to be platted into village lots portions of the lands so obtained, and have used their influence and efforts to build up an important business point there, said lands being at that time of a mere nominal value only, but through the personal efforts of these defendants in platting the lands purchased, establishing lumber yards and other places of business the value thereof has been greatly enhanced.

That the land so conveyed by said Thurston and Porter, except so much thereof as may be used for right of way and depot purposes, was not acquired for the use or benefit of said railroad company, and was not at the time the same was so acquired necessary to the use of said company.

And this defendant, further answering, admits that before the commencement of this action he did, for the joint benefit of himself and his codefendants herein, obtain the legal title to the following-described lands, to wit:

The E. ½ of N. E. ¼, sec. 10, t'p 21, R. 9.
The S. W. ¼ of N. E. ¼ of sec. 15, t'p 21, R. 9.
The E. ½ of N. W. ¼ of sec. 15, t'p 21, R. 9.
The W. ½ of S. E. ¼ of sec. 15, t'p 21, R. 9.
The S. E. ¼ of N. W. ¼, sec. 28, t'p 21, R. 9.
The S. E. ¼ of S. W. ¼, sec. 28, t'p 21, R. 9.
The S. W. ¼ of S. E. ¼ of sec. 29, t'p 21, R. 9.

mentioned in the said complaint; but this defendant alleges that the title to said lands and to the whole thereof was procured by this defendant, for the joint benefit of himself and his said codefendants, from the State of Wisconsin, each of the defendants paying one-third the price paid for the same, and that such title was so obtained before the location of said railroad upon, across, or near the said lands or any part thereof; that the same was not obtained for the use and benefit of said railroad company; that the same are useful and valuable for agricultural purposes only, and are not necessary or needed by said company in the use or operation of its railroad, and are not and have not been in the use or occupation of said company, unless the line of said railroad is upon said lands, of which this defendant cannot now state with absolute certainty, as he has not the plat or record of the location of said road in his possession, but he believes it to be true that said road crosses said lands or some portion thereof, and that the same was located across said lands after the title thereto was obtained as aforesaid; but this defendant alleges that the right of way across said lands has not been paid or secured to the said owners or donated to said company, but the defendants are ready and willing to convey the same to said company when compensation is made therefor.

29 And this defendant, further answering, admits that on or about the 20th day of July, 1873, the exact time he cannot now state, the defendants obtained from J. A. Briggs and wife a deed of the following-described property, viz:

The W. ½ of N. E. ¼, sec. 32, t'p 21, R. 9.

The N. W. ¼ of S. W. ¼, sec. 32, t'p 21, R. 9.
The S. W. ¼ of N. W. ¼, sec. 32, t'p 21, R. 9.
The N. ½ of N. E. ¼ of S. W. ¼, sec. 32, t'p 21, R. 9.
And ten acres off the east side of the S. E. ¼ of N. W. ¼, sec. 32, t'p 21, R. 9.

But this defendant alleges that said lands were purchased by the defendants for their use and benefit, and not for the use of the said railroad, and the consideration therefor was wholly paid by the defendants; that said lands are not necessary to the use of the said railroad and have not been used by said company for the use and benefit of said road, or for any other purpose.

And this defendant, further answering, admits that before the commencement of this action, and at or about the time in that behalf stated in the complaint, the defendants obtained a deed from Mrs. J. A. Briggs of the N. W. ten acres of the S. E. ¼ of said sec. 32, t'p 21, R. 9, and of J. A. Briggs and wife all of the S. E. ¼ of N. W. ¼ said sec. 32, lying south of the Trempealeau river, and all of the N. E. ¼ of N. W. ¼ of same section north and west of the railroad track; but this defendant alleges that said land was not a donation to said railroad company or for the use of said railroad, and no part of the consideration for the said deed was paid or furnished by said railroad company, but the whole thereof was paid by these defendants.

And this defendant, further answering, denies that the above-described lands were obtained for the use and benefit of the said railroad company or in trust for the said company, or that the consideration for the same was given by the said railroad company; and this defendant denies that the grantors in the said several conveyances of the said property to said defendants intended to convey the same to said railroad company for its sole and exclusive use and benefit; and this defendant denies that said conveyances or any of them were made to the defendants or either of them with the understanding and upon the express or implied assurance made by the grantees at the time of receiving such title or titles or at any other time; that in the taking of such titles they were acting for said railroad company, or that the title to such property would inure to the benefit of the said railroad company.

And this defendant, further answering, denies that he has, individually or in company with his codefendants, acquired title to any lands, except as herein stated, or holds the same in trust for said company or for the use and benefit of said company; and this defendant denies that said defendants have in any instance taken the titles to any lands acquired by or for the benefit of said company secretly or caused the titles to lands so acquired to remain in the grantors or caused the titles thereto or to any part thereof to be taken in the name of persons other than the defendants.

And this defendant, further answering, says that before, during, and after the construction of said railroad he and his codefendants were large purchasers of lands along the line of said railroad, and contiguous and adjacent thereto, as an investment; that all the
30 lands so acquired, except as herein stated, were paid for in

the money of these defendants, and none of the same were paid for with the money, funds, rights, credits, or property of said company, and the title to all the lands so acquired was taken in the name of these defendants or in the name of some one or more of them.

And this defendant, further answering, says that in the construction of said railroad a large part of the same was located upon wild or unoccupied land, without first acquiring the right of way across the same or the payment of any compensation therefor, and in other instances lands not belonging to said company were taken possession of by the said company and the said road located thereon without the title thereto being acquired by said company or by any person for its use or compensation being made therefor, under a promise by said company to the owners thereof to make compensation therefor; and in some instances the said railroad was located upon the lands of these defendants, or the lands of some of these defendants, for which no compensation was then or has since been made; that at the time this defendant retired from the presidency a considerable portion of the right of way of said railroad had not been paid for, or the title thereto acquired by said company or by any person for its use; but this defendant alleges that he claims no interest in or title to any part of the said right of way or depot grounds, except where the same is upon the lands of this defendant or upon lands in which he has some interest and compensation has not been made therefor.

And this defendant, further answering, says he admits that some portions of the property set forth in the complaint, and therein charged to be held by these defendants for the use and benefit of the said railroad company, has been sold and the proceeds of such sales either paid to the defendants or some of them or is now due and owing to them.

And this defendant, further answering, denies that the plaintiff is entitled to the relief in the said complaint demanded, and he prays the same advantage of his said answer as if he had pleaded or demurred to the said bill of complaint, and prays leave to be dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

H. KETCHUM,
Defendant.

G. W. CATE,
Att'y for Ketchum.

31 December 1, 1879.—This day came the defendant, David M. Kelly, by his solicitors, Messrs. Norris & Ellis, and filed his appearance.

December 13, 1879.—This day came the complainant, by his solicitors, and filed his replications to the answers of Henry Ketchum and George Hiles, as follows:

Replication to Answer of Henry Ketchum.

United States Circuit Court, Eastern District of Wisconsin. In Chancery.

TIMOTHY CASE, Receiver of the Green Bay and Minnesota Railroad Company,

vs.

DAVID M. KELLY, HENRY KETCHUM, GEORGE HILES, and THE ARCADIA MINERAL SPRING COMPANY.

The replication of Timothy Case, receiver of the Green Bay and Minnesota Railroad Company, complainant, to the answer of Henry Ketchum, one of the defendants.

This repliant, saving and reserving unto himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto says that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the defendant is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in the said answer contained material or effectual in law to be replied unto, confessed and avoided, traversed or denied, is true; all which
32 matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by his said bill he has already prayed.

E. C. & W. C. LARNED,
Sol'rs for Complainant.

Replication to Answer of Geo. Hiles.

United States Circuit Court, Eastern District of Wisconsin. In Chancery.

TIMOTHY CASE, Receiver of the Green Bay and Minnesota Railroad Company,

vs.

DAVID M. KELLY, HENRY KETCHUM, GEORGE HILES, and THE ARCADIA MINERAL SPRING COMPANY.

The replication of Timothy Case, receiver of the Green Bay and Minnesota Railroad Company, complainant, to the answer of George Hiles, one of the defendants.

This repliant, saving and reserving unto himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto says that he will aver and prove his said bill to be true, certain, and sufficient in the law to be

answered unto, and that the said answer of the defendant is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in the said answer contained material or effectual in law to be replied
33 unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by his said bill he has already prayed.

E. C. & W. C. LARNED,
Sol'rs for Complainant.

January 5, 1880.—This day came the parties, by their solicitors, and filed their stipulation in writing that the hearing upon the order to show cause against the injunction against the defendant, David M. Kelly, be continued to the 14th day of January, instant, and that the time for said defendant to answer be continued to the same day.

And same day, "on motion of E. C. & W. C. Larned, complainant's solicitors, ordered that the bill of complaint in this cause be, and hereby is, taken as confessed against the defendant, The Arcadia Mineral Spring Company, for its having failed to plead, answer, or demur thereto."

January 13, 1880.—This day came the defendant, David M. Kelly, by his solicitors, and filed his answer as follows:

34 *Answer of D. M. Kelly.*

Circuit Court of the United States for the Eastern District of Wisconsin.

TIMOTHY CASE, Receiver of the Green Bay & Minnesota Railroad Company, Complainant,

vs.

DAVID M. KELLY, Impleaded with HENRY KETCHUM & GEORGE HILES, Deft's.

The separate answer of the defendant, David M. Kelly, to the bill of complaint of the above-named Timothy Case, complainant.

The said defendant, David M. Kelly, now and at all times hereafter, saving and reserving to himself all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainant's said bill of complaint contained, and praying the same advantage of this his answer as if he had pleaded or demurred to said bill, for answer thereto or unto so much or such parts thereof as he is advised is material for him to make answer unto, answers and says as follows:

He admits that said railroad company was incorporated, and that the name thereof was changed, and that the complainant was appointed and qualified as receiver and entered into the possession, control, and management, and was by said decretal order
35 empowered and directed, and that it was by said decretal order further ordered, and that before such appointment of

said complainant said railroad company had laid out, constructed, and operated a line of railroad as in said bill, in the several particulars aforesaid, alleged and set forth.

And he admits that divers portions of the right of way of said railroad were donated to said railroad company by the owners of lands through or adjoining which said railroad was laid out, and that the consideration for such donations was, in divers instances, the supposed value to the respective donating parties of the establishment of said line through or adjacent to the lands of such owners.

But he denies that a very large proportion of the right of way for the whole extent of said line was so donated, or that the consideration for every such donation was in every case such supposed value, but in what instances other than hereinafter set forth such donations were made or such was the consideration therefor this defendant, for want of possession or control of the maps, records, and papers relating thereto, as well as for want of having personally participated in the acquisition of such donations, does not know, has no recollection, is not informed, and cannot state.

He admits that along the line of said railroad depots or stations were established at various points and places deemed most desirable and advantageous for the interests of said railroad company, and that in some instances lands required for such depot grounds were donated upon such considerations as in that behalf in said bill alleged, but in what or how many instances this defendant, for reasons aforementioned, does not know, has no recollection, is not informed, and cannot state.

This defendant admits that the defendant Ketchum was president of said railroad company from some time in or about the year 1871, until December, 1877, but denies that he served as such officer later than the time last mentioned.

He denies that he, this defendant, was or acted as vice-president or general manager or other officer of said railroad company in the year 1872 or in the year 1873 or at any time in the year 1874 previous to April 6, 1874, otherwise or further than that, by and under a certain contract in writing between said company and this defendant, bearing date on and made on or about the 12th day of February, 1872, and only in aid of this defendant's performance of said contract in other particulars and for the purposes thereof, said railroad company conferred upon this defendant, on or about the day last aforesaid, and this defendant thereafter until the 6th day of April, 1874, exercised and performed, the powers and duties of a general manager of a railroad company in and about the construction and operation thereof, but without holding any office in or of said railroad company or any relation thereto further or other than as created and defined by said contract, a copy of which contract is hereto annexed, and this defendant prays that the same may be taken as a part hereof in all respects as if said contract were herein otherwise at length set forth.

He admits that on the 6th day of April, 1874, he became vice-president and general manager, and thereafter served in such capacities until on or about December 28, 1877.

He denies that the defendant Hiles was the partner of this defendant in any contract for the construction of said railroad or any part thereof, or that this defendant ever had any interest in any contract of said Hiles for such construction, or that said Hiles ever
35¼ acted with this defendant and said Ketchum or either of them in acquiring lands for said railroad company for any purpose, except in the cases of Thurston and Porter hereinafter mentioned, or that said Hiles ever acted in relation to any right of way or depot grounds or the acquisition thereof, except that in a few instances, and solely for his own purposes as contractor for construction, in order to avoid delays in his performance of his construction contracts in consequence of the right of way not having been previously procured through tracts of land upon which said Hiles was at the time or times constructing or shortly about to construct the road-bed under such contract or contracts, he, said Hiles, negotiated with land-owners so far as to remove their resistance to such construction through their lands, but without, to the knowledge, recollection, information, or belief of this defendant, obtaining from them or any of them any title to any land otherwise than to himself, to his own use, and with his own means; or that said Hiles and Ketchum or either of them and this defendant acted together, otherwise than as hereinafter set forth, in obtaining the lands and property in that behalf in said bill of complaint and herein more specifically mentioned and described.

This defendant admits that he and said Ketchum did, during the years 1872 and 1873, act together in obtaining and acquiring divers lands for said railroad company for its right of way and depot grounds along the line of said railroad, which last-mentioned lands, however, as he avers and insists, do not include, further than hereinafter expressly admitted, any lands in said bill specifically mentioned or described.

And he avers that, except as herein set forth, he has, to the best of his knowledge, recollection, information, and belief, heretofore either taken in the name of said railroad company or conveyed to it all property by him for it purchased or acquired, or to or through him for it donated, for right of way, depot grounds, and all other railroad purposes.

But he insists that he had at all times full right to acquire and take title to, in his own name and to his own use, by donation or by purchase with his own means, or for other consideration not proceeding from or prejudiced to said railroad company, either alone or with any other person or persons, any lands along the now existing line of said railroad, whether or not said railroad had at the time of such purchase or other acquisition been located or constructed through, over, or adjacent to such lands; and he denies that, by reason of anything in said bill alleged or charged or otherwise, any property in said bill mentioned or described or any interest therein is held, or ought to be adjudged to be held, by him as trustee for said railroad company, or that the complainant is entitled to have the title to all or any thereof conveyed to him by this

defendant, or that it is this defendant's duty to execute to the complainant any conveyance whatever.

And, on the contrary, this defendant avers that before, during, and after the construction of said railroad the defendants were, as well severally as two or more of them in common, purchasers of large quantities of lands along or adjacent to or in the vicinity of the existing line of said railroad, including divers lands in said bill and hereinafter described, with their own respective moneys, for their own uses, and in their own rights, respectively, as they respectively lawfully might, and none thereof were by this defendant or for his use acquired with any moneys, rights, credits, property, or other means of said railroad company, and that the titles thereto were taken in the names of the defendants or of one or more of
35½ them, but by carelessness or oversight only in some instances without naming in the conveyance thereof every defendant therein interested as purchaser.

That this defendant, on his part, acquired all such lands and interest in lands, including all the lands in said bill described as ever acquired in whole or in part by him, with the intent to convey to said railroad company gratuitiously all requisite right of way and depot grounds therein and thereof in him so vested, whether theretofore or thereafter ascertained, located, or designated, and without any intent whatever to retain any such right of way or depot grounds to his own use, or to exact any compensation from said railroad company therefor.

This defendant admits that on or about the 22d day of August, 1873, the defendants herein obtained from Ebenezer Thurston and wife and from Duke Porter the respective deeds of that date of the lands and premises is that behalf respectively alleged; and that the right of way therein and thereby conveyed was then and there a donation to said railroad company, but he avers that all the residue of said premises so conveyed by said Thurston and Porter were so conveyed after the location of said railroad across said premises, and not in consideration of such location, or upon or for any consideration proceeding from or furnished by said railroad company; and that, except the right of way and the depot grounds next hereinafter mentioned, said premises or any part thereof were neither then necessary nor probably necessary to nor acquired for the use of said railroad company.

That said lands were in the town of Preston, which had voted $25,000 in bonds in aid of said railroad company upon condition that a depot should be located within said town, and said lands were centrally situated in said town, and included the most elegible site for such depot; that lands in said town were then of slight nominal value, and said Thurston and Porter owned other lands therein and desired to secure the building up there of a village and business point, and to interest and induce the defendants to lay out a village plat and endeavor to promote settlement, building, and business in that vicinity; and that said Thurston and Porter, in consideration of the defendants' agreement so to do, and upon no other consideration, conveyed the aforesaid premises, other than said right of way,

to the defendants in their own rights and solely for their own use; that such consideration was well calculated as well to promote the business and interest of said railroad company as to increase the value of other neighboring lands of said grantors.

That the defendants accordingly platted a portion of said lands, and did, by their personal interests in the locality and in the increase of settlement and the establishment of new and additional business and kinds of business there, greatly enhance such value and promote the business and interests of said railroad company.

This defendant admits that the defendants obtained title to the seven parcels of land in said bill described, situate in secs. 10, 15, 28, and 29, in t'p 21, of R. 9; but he avers that the same were by said Ketchum acquired by purchase from the State of Wisconsin in his name only, but for the use and benefit of all the defendants in common, share and share alike, and wholly and solely with the moneys of said defendants, share and share alike, and before the location of said railroad over or through any (part) thereof, and neither in whole nor in part for the use of said railroad company; that, when so acquired, the same or any part thereof were not necessary to any use of said company, and otherwise than for
36 right of way have not been used or occupied by said company, and whether any part thereof is or has been used for right of way this defendant, for such reasons as aforesaid, does not know or recollect, is not informed, and cannot state.

This defendant admits that the defendants, in or about August, 1873, and thereafter at divers times in 1873, obtained from J. A. Briggs and wife or one of them deeds of the eight several tracts of land in sec. 32, in t'p 21, of R. 9, in said bill in that behalf described, but he denies that said eight tracts or any (part) thereof were obtained, or necessary when obtained, for any use of said railroad company, or obtained upon or for any consideration proceeding from or prejudicial, to wit, or relating to the location or construction of said railroad, or that the same or any part thereof have ever been used by said railroad company; and, on the contrary, he avers that all said eight tracts were purchased by said defendants for their sole use in good faith, and for a full consideration by them paid wholly of their own moneys.

This defendant admits that he has acquired title to said lots in said block thirteen and to said blocks forty-three, forty-five, and forty-six, in said town of Seymour, and to said five acres of land in said bill alleged to be used for depot purposes whereon the depot and station building of said railroad company at Seymour is situated.

But he avers that all and singular thereof were to him donated in his own right and to his own use, and that he acquired title to all thereof under and pursuant to or in consequence and modification of bonds for conveyance made by the respective grantors unto him in November, 1871, while this defendant was a contractor with said railroad company for the construction of said railroad under and by virtue of a contract in writing between said company and this defendant, bearing date on and made on or about the 5th day of June,

1871, and, while this defendant held or exercised no office of or under said company or relation to said company otherwise than under and by virtue of said contract and the letter of attorney hereinafter mentioned. A copy of the contract last mentioned is hereto annexed, and this defendant prays that the same may be taken as a part hereof in all respects as if said last-mentioned contract were herein otherwise at length set forth.

And the whole of the aforesaid property at Seymour, except such portion or portions thereof as have been by him sold and to the proceeds of any and all sales thereof, he claims title in his own sole right as of his own sole property in all respects.

He admits that he has acquired title to the said N. W. ¼ of N. E. ¼ of sec. 21, in t'p 23, of R. 13, and to all the lots and blocks in said addition to the village of Manawa, but he avers that on or about the 31st day of May, 1876, he bargained and sold and made and delivered a written agreement to convey lots one and eight, in block twelve, in said addition, for the sum of eighty-five dollars, whereof one-third has been paid and the residue remains unpaid, and that said N. W. ¼ of N. E. ¼, and the lands whereon said addition is platted, were donated to him personally in his own right and to his own sole use by deed made and bearing date October 22, 1872, and while said contract with said railroad company of February, 12, 1872, was in force, and this defendant held no office, agency, or relation under, of, or to said company otherwise than under and by virtue of the contract last mentioned; and that said lands were so donated and conveyed to him to induce this defendant to
37 become personally interested in the locality thereof, and to endeavor to promote settlement and the increase of building and business, and thereby to enhance the value of other neighboring property of the grantor.

And this defendant admits that on the 20th day of July, 1877, but not on the 27th day of June, 1877, by deed made and bearing date on the 20th day of July, aforesaid, he acquired title to said S. W. ¼ of S. W. ¼ of sec. 23, in t'p 23 of R. 4 west, except eleven certain portions thereof, which this defendant avers were in and by said deed expressly excepted; but he denies that the consideration for said deed was in whole or in part as in said bill alleged, or that the same or any part thereof was furnished by said railroad company. On the contrary, he avers that such deed was made and delivered in partial performance of a bond or writing obligatory of said L. G. Merrill for the conveyance of said tract to this defendant made and bearing date April 10, 1872, and while said contract with said railroad company of February, 12, 1872, was in force, and this defendant held no office, agency, or relation under, of, or to said company otherwise than under and by virtue of the contract last mentioned: that said bond for conveyance and said conveyance in part performance thereof were together as and for a donation to this defendant personally in his own right and to his own use, made to induce this defendant to take personal interest in the locality of the premises last mentioned, and there to promote increase of settlement, building, and business; that said Leander G. and B. H. Merrill on

the 10th day of April, 1872, had many other lands and other property and business in the vicinity of the premises lastly described, the value whereof might be enhanced by such interest and action of this defendant, which fact and circumstances were the inducements and consideration for said bond for conveyance and donation.

This defendant denies that all or any of said property in said towns of Seymour, Manawa, or Blair, or in sec's 32, 23, or 21 in said bill in that behalf described, were acquired by this defendant for the use or benefit of said railroad company otherwise or further than lay in the aforesaid intent of this defendant to donate to said railroad company therefrom the right of way and suitable and sufficient depot grounds about the stations or depots thereon or to be placed thereon; and he denies that the consideration of the same or any thereof was, except as herein expressly admitted, given by said railroad company, or that the title to said lots and lands or any thereof is, except as herein expressly admitted, in equity vested in said railroad company, or that this defendant is in truth or in fact the trustee of said company as to all or any of said property, or ought to be required to convey the same or any part thereof to the complainant for any pupose whatever.

This defendant admits that the said mortgages were of the tenor and effect in that behalf in said bill alleged.

Save as in this answer otherwise admitted or set forth, this defendant denies that all or any of the lands in said bill in that behalf mentioned or described or any share or interest therein were obtained by this defendant for the use or benefit of said railroad, or that the consideration for the same or any part thereof was given by said railroad company, or that the grantors in any or either of the several conveyances of the said property made to this defendant or to any or either of his codefendants to his use, to his knowledge, recollection, information, or belief, ever intended to convey

38 said property or any part thereof to said railroad company or for its use and benefit or that the conveyances or any of them were made to this defendant or to his use while he was any officer of said railroad company or in any relation to said company other than under and by virtue of one or the other of said contracts in writing, whereof copies are hereto annexed and made parts hereof, except in the instances herein set forth, where such conveyances were made in performance on the part of the grantors of bonds or agreements to convey to this defendant, made while this defendant held no office of or under said company or any relation thereto otherwise than under and by virtue of one or — other of said contracts, whereof copies are hereto annexed; or that such conveyances or any of them were, to this defendant's knowledge, recollection, information, or belief, made with any understanding or upon any assurance, express or otherwise, *made* by this defendant, or to his knowledge, recollection, information, or belief by any other grantee therein, at or before the time of receiving any such title; that said grantees or this defendant were or was in the acquisition of any such title other than the title to the aforesaid right of way

obtained from said Thurston and Porter, acting for said railroad company, or that any title to any of said property made in the name of the defendants or any of them, including or for the use of this defendant, except the right of way lastly mentioned, would inure to the benefit of said railroad company.

This defendant denies that any title to any other lot, tract, or parcel of land belonging to said railroad company which this defendant or any one for him has acquired in trust for said company or for its use or benefit has been by this defendant, or to his knowledge, recollection, information, and belief by any other person for him, taken secretly or not secured or taken in the name of any person or persons other than the defendants.

And this defendant, insisting, denies that the title to any lands held or claimed in whole or in part by this defendant which are within the right of way of said railroad company anywhere on the line of said railroad or obtained or used for depots, depot grounds, or any other use or purpose of said railroad, or to any lands along said line or contiguous thereto or included in any town, village, or depot site laid out by the defendants or by any of them, including this defendant, along said railroad which has been obtained by this defendant alone or with his codefendants or either of them by gift, grant, purchase, or agreement, howsoever the title thereto may have been taken, is in equity or good conscience the property of said railroad company or belongs thereto, or that this defendant or any other person or persons for him holds the same in trust or for the use or benefit of said railroad company, or is or are chargeable with notice of any right or equity of said railroad company, or in equity bound to account to the complainant or otherwise for the use or benefit of said railroad company for any gains, profits, or moneys received or obtained out of or for the use, sale, or disposition of any of such lands or property, or to make or execute to the complainant or otherwise any conveyance or conveyances of all or any such lands, property, or interest for any purpose whatever.

This defendant admits that he did, about the 15th day of February, 1875, convey to the said Hiles a large amount of the said property obtained, as hereinbefore set forth, from said Briggs, Thurston and Porter; and he avers that he, at or about the same time and before the year 1878, conveyed to said Hiles all his, this
39 defendant's, then remaining right, title, and interest in all and all manner of real property in which this defendant and said Hiles had been or then were interested in common, including all then unsold of the lands which are in said bill described, beginning with the conveyance of Thurston and wife to and including the therein lastly alleged conveyance of Briggs and wife, and that he has not now, and had not at the time of the commencement of this suit or for a long time theretofore, to his knowledge, recollection, information, or belief, any right, title, or interest in or to any land heretofore by him in any manner acquired, held, or owned in common with said Hiles.

This defendant denies that said Hiles was a partner with him in said alleged land transactions or any of them otherwise or further

than as in this answer set forth, or that his said conveyance or conveyances to said Hiles were without consideration, and, on the contrary, he avers that the consideration therefor and for the conveyance of divers personal property conveyed in connection therewith at or about the same time, and for a single consideration in gross, was the sum of seven thousand dollars.

This defendant denies that he has alone, or with his codefendants or either of them, except by his aforesaid conveyance or conveyances to said Hiles, sold or conveyed any portion of any property deeded to the defendants or any of them for the use or benefit of said railroad company, or received any sum or sums of money or any note or notes secured by mortgage or mortgages or any other consideration for any such sale, or that any money, security, or consideration by or for him received is the property of said railroad company or should be paid to the complainant for any purpose.

He admits that he did, before the commencement of this suit, bargain and sell, and in some instances convey, other portions of divers premises described in said bill, and that the proceeds thereof were by him received or yet remain unpaid, all which bargains, sales, and conveyances and the proceeds thereof, including the contract to convey and proceeds thereof next hereinafter mentioned, he claims and insists were and are of his own property in his own sole right.

He admits that on or about the 17th day of March, 1879, he did contract to convey, but he denies that he has yet conveyed, to one August Guhr, in said bill miscalled August Geehs, said certain parcel of land in said town of Seymour for the said sum of $75, of which he received said $25 in cash at the time of so contracting, and, save aforesaid, he denies every allegation of said bill concerning such sale; and he denies that said lot was obtained or is one of any lots or lands by him obtained in trust for said railroad company; and he avers that the same is a portion of the said five acres by him obtained as aforesaid in his own right and for his own use in the S. E. ¼ of the N. E. ¼ of said sec. 32, in said town of Seymour.

He admits that he did and insists that he lawfully might appropriate to his own use the said $25 so received without accounting therefor to any other person.

This defendant further shows that while he was as aforesaid a contractor with or an officer of said company he, at divers times, became surety for said company on bond or undertaking upon appeal in divers actions against said railroad company prosecuted in divers courts of the State of Wisconsin, and, among others, in a certain action brought by one Sarah McVey, and in each of two certain other actions brought by R. C. & Esther J. Lyon or one of
40 them, and in a certain other action brought by Isaac R. Grover, and in a certain other action brought by one Annie Briggs, and in a certain other action brought by one Joseph Pettis, and in each of eleven other certain actions severally brought by Anton Kuch, George Schultz, Anton Speigal, Jacob Paradousky, Anton Kasben, John Lick, Joseph Schmidt, Peter Parazinski, August Fikfer, Frank Pipke, and Frank Woscheck, respectively; that he supposes, but does not know, that his liability as such surety in said

action of said McVey, and in one of said actions of said R. C. & E. J. Lyon or one of them, has been terminated by some settlement of said actions since made by the complainant herein; that unless such settlement or settlements have been so made his liability as such surety in each and every (of) the actions aforesaid remains, to the best of his knowledge, information, and belief, in full force.

That there is also pending and undetermined in the supreme court of New York county, in the State of New York, an action brought against this defendant as sole defendant therein by Edwin C. B. Garsia and others, as plaintiffs, in or about February 1, 1873, wherein the plaintiffs' damages are laid at ninety thousand dollars for alleged services of said Garsia rendered, as alleged, to this defendant in 1871 and 1872, previous to the 8th of February, 1872, in and about the attempted negotiation of the first-mortgage bonds of said railroad company.

That said alleged services, if any, were in fact rendered to said railroad company, and not to this defendant, by the said Garsia as the duly substituted attorney-in-fact of said railroad company, by this defendant appointed and substituted under and by virtue of a special letter of attorney, in writing, granted and issued by said railroad company to this defendant on or about the 23d day of June, 1871, and authorizing such substitution, a copy of which letter of attorney is hereto annexed, and this defendant prays that such copy may be taken as part hereof.

That this defendant has at all times hitherto contested and still is contesting the action last mentioned, and is advised by his counsel therein, and verily believes, that said railroad company, as well as this defendant, has a valid defense to the whole thereof, and to all and all manner of demands of the plaintiffs therein.

That said railroad company, in and by the aforesaid contract of February 12, 1872, for valuable and adequate considerations therein and thereby set forth, expressly assumed and agreed to pay all indebtedness and liabilities of this defendant theretofore contracted or incurred in and about the construction and equipment of said railroad, and all the business by him transacted for it, and to save, bear, and keep him harmless and indemnified thereof and therefrom.

That notwithstanding that this defendant claims and insists upon his title, in his own right, free of all demands of the complainant and of said railroad company, and of the trustee in said mortgages named, to all and singular the lands hereinbefore described or mentioned, whereof the title is in whole or in part vested in him or in any one for him, he has been at all times willing and intending to convey to said railroad company, without compensation therefor or expense to said railroad company, all right of way and all depot grounds by it used before the 22d day of November, 1878, through or within any such lands, so far as the title thereto or any interest therein was vested in this defendant or in any one for him, upon being released from or sufficiently indemnified against the liabilities aforesaid, and especially the said claims of Garsia and others, and from and against divers other liabilities for said railroad com-

41 pany at divers other times before the date last aforesaid existing, but before the date last aforesaid extinguished.

And that on or about the 22nd day of November aforesaid he notified said complainant in writing of the liabilities hereinbefore specified, and offered, if said railroad company or its friends would give him an ample bond to hold him harmless therefrom, to execute and deliver to said railroad company free of expense a deed of all right of way and of all depot grounds then in use by said railroad company, which were his property and whereof the title was in him, and upon the terms and conditions of said offer he has been ever since and still is ready and willing so to convey.

All which matters and things this defendant is ready to aver, prove, and maintain as this honorable court shall direct, and prays to be hence dismissed with his costs and charges in this behalf most wrongfully sustained.

DAVID M. KELLY,
One of said Defendants,
By WM. H. NORRIS,
One of His said Solicitors, the said Defendant being Absent from the State of Wisconsin.
NORRIS & ELLIS,
Solicitors for Defendant Kelly.

Contracts Referred to in Answer of David M. Kelly.

This agreement, made the 5th day of June, 1871, between David M. Kelly, of Green Bay, Wisconsin, party of the first part, and the Green Bay & Lake Pepin Railway Company, a corporation existing under and by virtue of the laws of the State of Wisconsin, and having its principal office at Green Bay aforesaid, party of the second part, witnesseth:

Firstly. That the said party of the first part, in consideration of the covenants, promises, and agreements hereinafter contained on the part of the said party of the second part, doth covenant, promise, and agree well and truly and according to the best of his ability to endeavor to build or secure the building of the railroad of said company from the point of beginning, near Fox river, at Fort Howard, to the Mississippi river, and to exert and use his utmost skill, judgment, and endeavors to promote, secure, and effect the building and completion of said railroad within a reasonable time next thence ensuing, *and* the following rate of progress—that is to say: To New London, Wisconsin, on or before January 1, 1872; to the Wisconsin river on or before January 1, 1873, and to the Mississippi river on or before January 1, 1876, it being expressly understood and hereby declared and conceded by the said party of the second part that for the accomplishment of such a result and every part thereof the party of the first part necessarily and materially relies upon the co-operation of the party of the second part and upon the prompt and faithful supply by it, as hereinafter provided, of all the means and aid in that behalf hereinafter mentioned, and that such co-operation and supply shall at all times be deemed a condition

essential and precedent to such performance as aforesaid on the part of the party of the first part.

Secondly. That the said party of the second part, in consideration of the premises, doth on its part covenant, promise, and agree to and with the party of the first part to render and yield
42 unto him at all times, in aid of the performance of this agreement on his part, all possible assistance and co-operation not inconsistent with the provisions hereof, and in aid of his efforts to perform this agreement on his part, and in payment for his fulfillment thereof, subject only to the provisions in that behalf hereinafter contained, to assign, transfer, set over, and deliver unto him, or to his order and subject to his disposition and control, the mortgage bonds of said company secured upon its road, franchises, and property to the amount of sixteen thousand dollars per mile; all municipal aid, whether of towns, cities, villages, boroughs, or counties, heretofore secured or which may be hereafter secured by said company or to which, on or before the completion of said railroad, it may become in any manner entitled, and all authorized capital stock of said company not heretofore issued or hereafter to be issued in exchange for such municipal aid as aforesaid.

Thirdly. It is mutually covenanted, promised, and agreed that said mortgage bonds, municipal aid, and stock shall not be expended or disposed of by the party of the first part faster than at the rates following, to wit: Said bonds shall not be expended or disposed of faster than at the rate of sixteen thousand dollars per mile of completed railroad, or such municipal aid faster than at the rate or rates per mile, or other proportion provided in or by the terms of the several proposition or propositions whereunder the same aid shall be or become receivable, or said stock faster than at the rate of forty thousand dollars per mile of completed railroad or faster than at the rate of ten thousand dollars per mile of mere road-bed or grade, such completion in all cases to be of and upon a continuous line tending westward from the point of beginning aforesaid.

Fourthly. The said party of the first part, in consideration of the premises, further covenants, promises, and agrees that upon failure actually to complete said railroad or any part thereof at the time or times in that behalf hereinbefore mentioned, he will return and redeliver to the party of the second part, upon its demand, all such mortgage bonds and stock theretofore by him received which shall not at the time of such failure have been actually expended or authorized to be expended by the foregoing provisions of this agreement, to the end that the same may become and remain thereafter the property of the party of the second part free from any and all claim of the party of the first part.

It is further mutually agreed that for all the purposes of this agreement the terms "complete," "completed," "completion," and "built" shall, respectively, be held and taken to mean such condition of said railroad, or of any given part thereof, as may be otherwise described by the expression "graded, tied, ironed, and with trains of cars other than construction trains running thereon;" and the terms "grade" and "road-bed" shall be deemed and taken to

mean a grade or road-bed suitably constructed and ready for the reception of ties and rails.

It is further covenanted, promised, and agreed by the party of the second part that if notwithstanding faithful and diligent effort and endeavor on the part of the party of the first part to perform his agreement hereinbefore contained, he shall fail to effect the completion within the time in that behalf hereinbefore expressed of any part whatever of said railway, the said party of the second part shall and will, whenever it shall seek to rescind this agree-
43 ment on account of such failure, pay to the party of the first part his actual cash expenditures incurred in his efforts and attempted services hereunder.

And, further, that it, the said party of the second part, shall not nor will at any time during the continuance of this agreement make with any other person or persons whomsoever any contract or agreement whatsoever without the consent of the party of the first part first thereto, in writing, had and obtained.

In witness whereof the said party of the first part hath hereunto set his hand and seal the day and year first above written and the party of the second part hath caused these presents to be subscribed by its president and secretary and the corporate seal to be hereto affixed, pursuant to a vote of the board of directors of said company had and passed at a meeting thereof duly holden on the 5th day of June, 1871.

(Signed) DAVID M. KELLY. [SEAL.]
[CORPORATE SEAL.] H. KETCHUM, *President.*
FRED. S ELLIS, *Secretary.*

Signed, sealed, and delivered in presence of—
JESSE M. ST. CYR.
C. H. COTTON.

This agreement, made the 12th day of February, 1872, between David M. Kelly, of Green Bay, Wisconsin, party of the first part, and the Green Bay & Lake Pepin Railway Company, a corporation existing under and by virtue of the laws of the State of Wisconsin and having its principal office at Green Bay aforesaid, party of the second part, witnesseth:

Firstly. That the said party of the first part, in consideration of the covenants, promises, and agreements hereinafter contained on the part of the said party of the second part, doth hereby release and surrender his contract with said company made on the 5th day of June, 1871, and doth hereby covenant, promise, and agree to account to the party of the second part when thereto required for and concerning all mortgage bonds of said company and all municipal aid bonds of every description by him heretofore from or through said company received, had, or obtained, and for and concerning the disposition and proceeds thereof, and to engage in the service of the said party of the second part, for all and singular the purposes hereinafter set forth, as its chief financial and construction agent, and to perform during the continuance of this agreement the duties usually

performed by a superintendent or general manager of a railroad company in and about the construction and carrying business thereof, and, as such agent and in the performance of such duties as aforesaid, well and truly and to the best of his ability to assist in procuring local or municipal aid and in operating the railroad of said company as fast as the same shall be built; to take charge of and conduct to the best of his ability and skill the negotiation and disposition of the mortgage bonds of said company and of the municipal or local aid by it heretofore obtained, and well and truly and according to the best of his ability labor and endeavor to build or secure the building of said railroad from its present western terminus at New London to the Mississippi river, and exert and use his utmost skill, judgment, and efforts to promote, secure, and effect the
44 building and completion of said railroad within a reasonable time next and hence ensuing, and at the following rate of progress, to wit: To the Wisconsin river on or before January 1, 1873, and to the Mississippi river on or before January 1, 1876, and in the meantime to endeavor to promote in all other respects the interests of the party of the second part, and that he will not during the continuance of this agreement actively engage in building any other railroad without the consent of the party of the second part first had and obtained.

It is expressly understood, and by the party of the second part hereby declared and conceded, that for the accomplishment of such results and every part hereof the party of the first part necessarily and materially relies upon the ready co-operation of the party of the second part and upon the prompt and faithful supply by it, as hereinafter provided, *and* all the means and aid in that behalf hereinafter mentioned, and upon the prompt and faithful performance by it of all the covenants, promises, and agreements on its part hereinafter contained, and that such co-operation, supply, and performance shall at all times be deemed a condition essential and precedent to performance by the said party of the first part of any act or thing by him to be performed.

Secondly. That the said party of the second part, in consideration of the premises, doth on its part covenant, promise, and agree to and with said party of the first part to assume and pay all indebtedness and liabilities by him heretofore contracted or incurred in or about the construction and equipment of said railroad and all the business by him transacted for the party of the second part, and to save, bear, and keep him harmless and indemnified thereof and therefrom; to pay him all his expenditures made or incurred out of or with his private means in or about the service of said company, and for his services rendered since the 5th day of June, 1871, and to the date hereof as in the nature of salary at and after the rate of five thousand dollars per annum.

And said party of the second part doth further covenant, promise, and agree and hereby declares that so much of the one million six hundred thousand dollars, par value, of the capital stock of said company apportionable to the forty miles of said railroad already completed by the party of the first part under his aforesaid contract

of June 5, 1871, and his previous contract of July 23, 1870, as has not been issued or pledged in exchange for municipal aid or taken by private subscription or otherwise actually used in or about construction or equipment is and to all intents and purposes shall be deemed the absolute and exclusive property of the party of the first part, and, so far as not yet issued and delivered, shall be issued and delivered unto him upon his demand without any further action of the board of directors in that behalf.

And the said party of the second part doth hereby further covenant, promise, and agree to and with said party of the first part to employ and doth hereby employ him to perform the duties and for all other the purposes aforesaid, and doth hereby concede and grant unto him full power and authority in the premises, and doth covenant, promise, and agree to yield and render unto him at all times in aid of his efforts to perform this agreement on his part all possible assistance and co-operation not inconsistent with other provisions hereof and subject to the provisions in that behalf hereinafter contained to assign, transfer, set over, and deliver unto him, or as he shall direct and subject to his charge, disposition and control, all the mortgage bonds of said company not yet expended or disposed of secured upon its road, franchises, and property to the amount of sixteen thousand dollars per mile, and all municipal aid, whether of towns, cities, villages, boroughs, or counties, heretofore obtained or voted, so far as not already expended or disposed of, or which may be hereafter obtained or secured by said company, or to which, at or before the completion of said railroad, said company may become in any manner entitled, and all authorized capital stock not heretofore issued, wherever before mentioned, or hereafter to be issued in exchange for such municipal aid as aforesaid, and to bear, pay, discharge, and reimburse to him all his expenses by him to be made or incurred in or about the business of said company and the performance of this agreement, and for his services to pay to him, in addition to the stock hereinafter mentioned, a yearly salary or sum of five thousand dollars; and, in further compensation for his services during the progress of construction of said railroad westward from New London, whenever and as soon as any section of five miles, continuous with said railroad as already completed, shall be graded, to issue and deliver to the party of the first part, as and for his sole and absolute property, fifty thousand dollars of the capital stock of said company at par value, and, whenever and as soon as each section of five miles, continuous with said railroad as theretofore already ironed, shall be tied and ironed, to issue and deliver to the party of the first part, as and for his sole and absolute property, such further amount of said stock as, with the stock theretofore consumed, pledged, or appropriated by, for, or in subscriptions and the construction of such section, will make up the amount of two hundred thousand dollars of stock at par value.

Nothing in this agreement contained shall be construed as creating or defining any office of chief financial agent, superintendent, or general manager, it being, on the contrary, expressly understood and declared that all and singular the powers and authority hereby

conferred upon the party of the first part are so conferred as incidental to and in aid of the principal design of this agreement—that is to say, the complete consummation of said railroad.

Thirdly. It is mutually covenanted, promised, and agreed that said mortgage bonds, municipal aid, and stock shall not be expended or disposed of by the party of the first part faster than at the rates following, to wit: Said bonds not faster than at the rate of sixteen thousand dollars per mile of completed railroad, such municipal aid not faster than at the rate or rates per mile or other proportion provided in or by the terms of the several proportions whereunder the same shall be or become receivable, and said stock not faster than at the rate of forty thousand dollars per mile of completed railroad, nor faster than at the rate of ten thousand dollars per mile of mere road-bed or grade; such completion to be in all cases of and upon a continuous line tending westward from the present western terminus.

Fourthly. The said party of the first part, in consideration of the premises, further covenants, promises, and agrees that upon his failure actually to complete said railread or any part thereof at the time or times in that behalf hereinbefore mentioned he will return and redeliver to the party of the second part, upon its demand, all such mortgage bonds, municipal aid bonds, and stocks theretofore by him received which shall not at the time of such failure have been actually expended or authorized to be expended by the foregoing provisions of the agreement, except such amounts of said stock as may in the meantime have been received or earned and not yet then received by said party of the first part as and for his sole and absolute property, as hereinbefore provided: Provided, nevertheless, That before making such demand the said party of the second part shall pay unto the party of the first part all arrears of salary and expenses and issue and deliver unto him all arrears of stock which shall then be due unto him.

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It is further mutually agreed that for all the purposes of this agreement the terms "complete," "completed," "completion," and "built" shall, respectively, be held and taken to mean such condition of said railroad or of any given portion thereof as may be otherwise described by the expression "graded, tied, and ironed," and the terms "grade" and "road-bed" shall be deemed and taken to mean a grade or road-bed suitably constructed and ready for the reception of ties and rails.

It is further covenanted, promised, and agreed by the party of the first part that if, notwithstanding faithful and diligent effort and endeavor on his part to fulfill the foregoing agreement on his part, he shall fail to effect the completion, within the time in that behalf hereinbefore expressed, of either portion of said railroad the said party of the second part shall, after first paying, issuing, and delivering unto the party of the first part all arrears of salary, expenses, and stock then due to him and unpaid and undelivered, have full power and authority to declare this contract void, and thereupon to proceed to complete the performance by such means and agents as it may choose whereof the party of the first part may have failed.

It is further mutually covenanted, promised, and agreed that all disbursements to be made during the continued building of said railroad shall be made by said company through its proper officers, which officers shall at all times keep and hold, subject to the inspection of the party of the first part, a correct record of all financial transactions, with all proper vouchers therefor, and all books, accounts, and papers of said company.

And, lastly, the said party of the second part doth further covenant, promise, and agree that it will not at any time during the continuance of this agreement make with any other person or persons any contract or agreement whatsoever without the consent of the party of the first part first thereto in writing had and obtained.

In witness whereof the party of the first — hath hereto set his hand and seal the day and year first above written, and the party of the second part hath caused these presents to be subscribed by its president and secretary and the corporate seal to be hereto affixed, pursuant to a vote of the board of directors of said company had and passed at a meeting thereof duly holden on the 12th day of February, A. D. 1872.

(Signed) DAVID M. KELLY. [SEAL.]
H. KETCHUM, *President.*
[SEAL.] FRED. S. ELLIS, *Secretary.*

Signed, sealed, and delivered in presence of—
J. F. GOODING.
T. P. BINGHAM.

47 *Letter of Attorney Referred to in Answer of David M. Kelly.*

Know all men by these presents that the Green Bay & Lake Pepin Railway Company, a corporation existing under and by virtue of the laws of Wisconsin and having its principal office in the city of Green Bay, in the county of Brown and State of Wisconsin, hath made, constituted, and appointed, and by these presents doth make, constitute, and appoint, David M. Kelly, of said city of Green Bay, in the county of Brown, State of Wisconsin, its true and lawful attorney, for it and in its name, place, and stead to negotiate in the United States and in Europe or in either country or continent the first-mortgage bonds of said company, and, if by him in such case deemed necessary, to accept in part payment of such bonds railroad iron or rails of good quality, but at current market rates or prices, giving and granting unto its said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about said premises as fully, to all intents and purposes, as it might or could do if personally present, with full power of substitution and revocation, hereby ratifying all that its said attorney or his substitute shall lawfully do or cause to be done by virtue hereof.

In witness whereof said company hath caused its corporate seal to be affixed and these presents to be subscribed by its president and

secretary this 23d day of June, A. D. 1871, pursuant to a vote of the board of directors duly had on the 22nd day of June, A. D. 1871.

HENRY KETCHUM, *President.*

[L. S.] FRED. S. ELLIS, *Secretary.*

48 February 23, 1880.—This day came the complainant, by his counsel, Mr. Larned, and the defendant, D. M. Kelly, by his counsel, Mr. Norris, and by consent it is ordered by the court that the hearing of the motion for an injunction against said defendant be continued to April 13th, 1880, subject to the right of either party to call the same up before that time upon three days' notice to the other.

May 31, 1880.—This day came the complainant, by his counsel, and by leave of the court filed his replication to the answer of the defendant, D. M. Kelly, and, on his motion, it is ordered by the court that the proofs in this cause be closed within ninety days, this order being made subject to motion of defendants' counsel to set the same aside within thirty days, which replication is as follows, to wit:

Replication to Answer of D. M. Kelly.

United States Circuit Court, Eastern District of Wisconsin. In Chancery.

TIMOTHY CASE, Receiver of the Green Bay and Minnesota Railroad Company,

vs.

DAVID M. KELLY *et al.*

The replication of Timothy Case, receiver of the Green Bay and Minnesota Railroad Company, complainant, to the answer of David M. Kelly, one of the defendants.

This repliant, saving and reserving unto himself all and all manner of advantage of exception to the manifold insufficiencies
49 of the said answer, for replication thereunto says that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the defendant is uncertain, untrue, and insufficient in the law to be replied unto by this repliant, without this, that any other matter or thing whatsoever in the said answer contained material or effectual in law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by his said bill he has already prayed.

E. C. & W. C. LARNED,

Sol'rs for Complainant.

July 12, 1880.—This day came the complainant, by his counsel, and, on his motion, it is ordered by the court that it be referred to Francis Bloodgood, a commissioner of this court, to take the testimony in this cause and report the same to the court.

November 10, 1880.—This day came the parties, by their counsel, and, on application of Mr. Larned on behalf of the complainant, it is ordered by the court that the complainant have leave to take the testimony of J. R. Sechler and Catherine Davy as part of his
50 testimony-in-chief; and it is further ordered that the defendants close their proofs within twenty days from this date, and that the complainant have forty days to take his rebutting testimony after the defendants' proofs are closed.

December 20, 1880.—This day came the complainant, by his counsel, and moved the court to strike from the files the deposition of T. H. Earle taken on behalf of the defendants; and said motion being argued by Mr. Larned for the complainant and by Mr. Lynde for the defendants, the court held the same under advisement.

January 3, 1881.—This day came the complainant, by his solicitors, and filed notice of application for a commission to be issued to Rufus K. Trevor, of New York city, to take the depositions of John I. Blair and William E. Dodge on the part of the complainant, and also filed interrogatories to be annexed to said commission.

January 5, 1881.—This day came the parties, by their counsel, and, on application of the defendants, it is ordered by the court that they have leave to file within five days affidavits in reply to the affidavit of the complainant this day filed upon the motion to suppress the deposition of T. H. Earle and that the complainant have five days after service of such affidavits to reply thereto.

January 6, 1881.—This day came the complainant, by his
51 counsel, and, on his motion, it is ordered by the court that the time for him to take rebutting testimony be, and hereby is, extended fifteen days from this date.

January 7, 1881.—This day came the defendants, by their solicitors, and filed cross-interrogatories to be annexed to the commission to take testimony of John I. Blair and William E. Dodge.

January 10, 1881.—This day came the complainant, by his solicitors, and moved the court to strike out certain of the interrogatories proposed to be propounded to the witnesses, John I. Blair and William E. Dodge.

January 13, 1881.—This day came the defendant, David M. Kelly, by his solicitors, Messrs. Finches, Lynde & Miller, and presented to the court his petition, as herein filed, praying that the injunction heretofore issued in this cause enjoining the defendants from conveying or disposing of any of the lands mentioned in the bill be dissolved or so modified as to apply only to the right of way and depot grounds in said bill mentioned, and that the receiver be required to file a bond of indemnity, with sufficient sureties, to secure and indemnify said petitioner against damages already occasioned by said injunction and against such damages as may hereafter occur by reason thereof.

Whereupon it is ordered by the court that the complainant
52 show cause on Monday, the 17th day of January instant, at eleven o'clock a. m., why the prayer of said petition should not be granted.

January 17, 1881.—This day came the parties, by their counsel,

and, in consideration of the motion of the complainant to strike from the files the deposition of T. H. Earle, it is ordered by the court that said motion be, and hereby is, overruled; and it is further ordered that the defendants produce said witness, T. H. Earle, before Mr. Francis Bloodgood, the examiner, on the 28th day of January instant, for cross-examination by the complainant at the complainant's costs.

January 22, 1881.—The complainant's objections to cross-interrogatories proposed to be propounded to W. E. Dodge and J. I. Blair under a commission to be issued to take their testimony having been heretofore argued by the counsel of the parties, on consideration thereof it is ordered by the court that the objections to said cross-interrogatories numbered 4, 5, 9, and 10 to said Dodge and Blair be overruled; that the objections to the special cross-interrogatories to said J. I. Blair numbers 3, 4, 5, 6, 7, and 10 be sustained, and that the objections to all the other special cross-interrogatories to said Blair be overruled.

January 24, 1881.—Commission issued to Rufus K. Trevor, Esq., New York city, to take the depositions of John I. Blair and William E. Dodge, on behalf of complainant.

53 March 25, 1881.—Depositions of John I. Blair and William E. Dodge received from Rufus K. Trevor, Esq., New York city, and filed.

April 4, 1881.—This day came the parties, by their counsel, and by consent it is ordered by the court that the defendants have thirty days from this date to put in testimony in reply to complainant's rebutting testimony and that the complainant have fifteen days thereafter to put in testimony in rebuttal thereof.

July 14, 1881.—Testimony on behalf of both parties, with exhibits, received from Francis Bloodgood, examiner, and filed.

And afterwards, to wit, at a special term of said court, begun and held at the city of Milwaukee, on the second Thursday of July, A. D. 1881, and on the fifth day thereof, to wit, on the 19th day of July, A. D. 1881—present, the Hon. John M. Harlan, associate justice of the Supreme Court of the United States, assigned to this circuit, presiding, and also the Hon. Charles E. Dyer, district judge—the following proceedings were had, to wit:

Hearing.

TIMOTHY CASE, Receiver of the Green Bay & Minnesota Railroad Company,
vs.
DAVID M. KELLY, HENRY KETCHUM, GEORGE HILES, & THE ARCADIA MINERAL SPRING CO. } In Equity.

54 This day came the parties, by their counsel, and this cause came on to be heard upon the pleadings and proofs, and was argued by Messrs. W. C. Larned and Theo. G. Case, for the complainant, and by Messrs. E. H. Ellis, H. M. Finch, Geo. H. Noyes, and L. B. Powers, for the defendants; and, the hearing not being concluded, the same was adjourned until to-morrow morning.

July 20, 1881.—This day came the parties, by their counsel, and the hearing of this cause was resumed; and, not being concluded, the same was adjourned until tomorrow morning.

July 21, 1881.—This day came the parties, by their counsel, and the hearing of this cause was resumed; and, being concluded, the court held the same under consideration.

And on said hearing the following testimony was read in evidence, to wit:

Testimony.

U. S. Circuit Court, E. D. Wisconsin.

TIMOTHY CASE, Rec'r G. B. & Minn. R. R. Co.,

vs.

DAVID M. KELLY *et al.*

55 Testimony on reference under rule 67, in equity.

MILWAUKEE, *July* 27, 1880.

Before Mr. Francis Bloodgood, examiner in chancery.

Present: For the plaintiff, E. C. & W. C. Larned, of Chicago, and Theodore G. Case, of Green Bay; for the defendants, Judge Ellis for Mr. Kelly; G. W. Case, Esq., for Mr. Ketchum; Judge Powers for Mr. Hiles.

Testimony on Behalf of the Complainant.

Deposition of David W. Wade.

Plaintiff calls as a witness DAVID W. WADE, who, being sworn, testified as follows:

Q. What is your name?
A. David W. Wade.
Q. Where do you reside?
A. I live in the town of Lincoln, Trempealeau county, Wisconsin.
Q. You are of lawful age?
A. Yes, sir.
Q. How long have you lived there?
A. Off and on for twenty years.
Q. Have you owned land in that neighborhood, in Trempealeau county?
A. Yes, sir.
Q. Did you ever own any land in the vicinity of Whitehall?
56 A. Yes, sir.
Q. Please state where Whitehall is.
A. It is located on sec. 23, R. 8, T. 22, in Trempealeau county.
Q. Whitehall is a town?
A. It is a village; yes, sir.
Q. Is it the county seat?
A. It is.
Q. What is your occupation?
A. Farmer.

Q. What was your occupation in the early part of the month of November, of the year 1873?

A. I had just returned to my farm; I had been for the seven years before that in the register's office and sheriff.

Q. You say you had just returned to your farm; where was your farm?

A. I own two farms; and the farm I returned to was on sec. 36, about two miles from Whitehall.

Q. Did you own any land in the immediate vicinity of Whitehall at that time?

A. Yes, sir; I owned the land Whitehall is situated on.

Q. Does any railroad now pass through Whitehall?

A. Yes, sir; the Green Bay & Minnesota.

Q. Has that always been the name of that road?

A. I think so.

Q. Do you know at what time the railroad that at present goes through Whitehall was built through there?

A. In the summer of 1873, I believe.

Q. Does that railroad go anywhere near your land, the land you formerly owned?

A. It goes right through the land.

Q. Did the railroad company ever institute any proceedings to condemn any portion of your land there?

A. To take the land by law? I think not.

Q. Did they ever have any negotiations with you for acquiring that land by contract or otherwise?

A. I made a contract with Mr. Ketchum for this land.

Q. Is Mr. Ketchum one of the defendants in this case? Is this the gentleman you refer to?

A. Yes, sir.

Q. You say you made a contract with Mr. Ketchum; please state in your own way what that contract was, the nature of it, as near as you can recollect it.

A. In the first place, Mr. Ketchum and Mr. Earle came to my house some time in October——

Q. Who is Mr. Earle?

A. Earle is the son-in-law of Mr. Ketchum; and he said—I don't remember exactly the conversation, but they were looking at the different points to locate depots, and one had been talked of——

Q. For what road?

A. Green Bay & Minnesota; and Mr. Ketchum went on to state how much benefit it would be to the place, and also to me; and they thought I ought to give the company—they said the company was poor, and they were building the road a good deal by donations—and I ought to give the company what was lying on the west side of a certain creek that ran across the land.

Q. How much was that he said he thought you ought to give?

A. That would make 120 acres.

Q. Did you own that land entirely?

A. I did, at that time.

Q. Mr. Ketchum then stated to you that if the company
57 should locate a depot on your land it would be a benefit to you and a benefit to the town, and in consideration of that you ought to donate the land?

A. That was the substance of the conversation.

Q. What did you reply to that proposition?

A. That I would give forty acres of the land if I could control the balance. To give that took about all there was to it that was good for anything, and I would not do that.

Q. Did you finally arrange to give the forty acres?

A. They went away at that time.

Q. How?

A. Ketchum and Earle then left my place. Earle—I saw him a few days afterwards and had another conversation with him, and we had a talk about the same thing, and finally he said they would not locate there——

(Objected to by Mr. Cate.)

Q. Just state what Mr. Earle said to you about the matter in the second conversation.

A. He said they would not locate there unless they could get a larger interest than I offered to give.

Q. Whom did Mr. Earle mean by "they?"

A. I supposed the company. I supposed Ketchum was one of the company.

Q. He would not locate what?

A. The depot.

Q. He said the company would not locate its depot there——

(Objected to by Judge Ellis as incompetent.)

Q. Mr. Earle then said that the company would not locate its depot on that land unless you gave them more land than forty acres?

A. Yes, sir; I told them then I would sell the property.

Q. What was the arrangement about selling the property, if any?

A. I told him the property was worth to me $4,000, but I would like the depot on that property where it was talked of; that they might have it for $3,500.

Q. Upon what motive—for what consideration—did you throw off the $500?

A. The consideration was the depot should be located at this point.

Q. What was the result of this conversation?

A. The result was that I drew a contract—he drew a contract and paid me a little on it, binding the bargain.

Q. In currency or by check?

A. In currency, I think. I think he gave me $50 to bind the bargain.

Q. And you agreed to sell the 120 acres for $500 less than you valued it?

A. I agreed to sell him all I had there—there was nearly seven forties—except a part of it I did not consider very valuable. There

was, I think, a fraction of thirteen acres—from ten to thirteen acres—that had been sold off that was lying on the east side of the river. Two and one-half acres were used for cemetery purposes; that I reserved. He drew the contract, and I was to give a deed, I think, when they paid $500; and when that was paid I did give a deed and took back a mortgage on a part of the land.

Q. You sold, then, nearly 280 acres?

A. Two hundred and eighty acres, less fifteen or sixteen acres.

Q. Something like 265 acres?

A. Yes, sir.

Q. Who drew this contract?

A. Earle drew the contract.

58 Q. Do you remember how the contract was drawn; have you the contract with you now?

A. No, sir; I have not.

Q. Did you keep a copy of it?

A. I did, of one.

Q. Is that copy now in existence?

A. I think it is among some of my papers, but I have not noticed it for a long while.

Q. Did you finally make a deed in pursuance of that contract?

A. Yes, sir.

Q. At what time did you make the deed?

A. I can't tell exactly about that. It would be my impression that it was made shortly after the first of January. I think so. I am not certain about that—whether it was made about the first of January, 1874, or the next spring; I don't remember about that.

Q. To whom did you give the deed?

A. The deed was given to Henry Ketchum.

Q. To whom was it made out; in his name, was it?

A. It was made out to Henry Ketchum.

Q. Did you make out any deed to the Green Bay & Minnesota Railroad Company?

A. No, sir.

Q. Please state the circumstances under which the deed was made out. Was any one present besides yourself and Ketchum?

A. I never talked with Mr. Ketchum after that first talk. I think the business was done through Earle. He was a notary public and did Mr. Ketchum's business, as I understood it.

Q. Did you ask Earle at the time the deed was made out anything about the form of the deed, or why it was made to Ketchum?

A. There was this about it: I thought it was a little strange it was made to Ketchum individually and I mentioned it to Earle—I understood Mr. Ketchum and Kelly were really the men putting the road through—and he said it was all right. It was understood with Kelly in deeding it to Mr. Ketchum. I thought it strange it should be deeded to Ketchum alone. That was the substance. I don't remember our conversation.

Q. You, had of course, no arrangement about deeding the property to Mr. Ketchum individually, and you thought it strange it

should be deeded to him, but you understood from Earle it was arranged between him and Kelly, or the other parties in the road, and it was all right.

(Objected to.)

Q. You found out at the time from Earle that it was arranged with Kelly—it was all right with Kelly?

A. Yes, sir; I understood so.

Q. And therefore you signed the deed, did you?

A. Yes, sir.

Q. Are you a married man?

A. I am.

Q. Did your wife join you in the deed?

A. Yes, sir.

Q. You forget exactly the time this deed was signed?

A. Yes, sir.

Q. Can you tell within three or four weeks or a month?

A. I think the $500 was to be paid by the first of January. I may be mistaken about that, but I think so.

Q. And the deed was to be executed after that?

A. Yes, sir; and it was to be in two payments—two notes given of $500 each.

Q. Whose notes were given?

A. Mr. Ketchum's notes were given and secured by mortgage on part of that property.

59 Q. Who paid the $500?

A. All the transactions I had were through Mr. Earle.

Q. Did he bring you the $500?

A. He paid me at different times that amount.

Q. How did he pay it?

A. I had some dealings. I don't know whether it was all in money—that is, the first payment—or whether there was part lumber. I was dealing considerably with him. I took a good deal of it in lumber.

Q. Were you fully paid?

A. The payment was made all right.

Q. Was any of it made by check, to your knowledge?

A. I don't remember.

Q. Do you remember any of it being paid in currency?

A. Yes, sir.

Q. And some in lumber?

A. Yes, sir.

Q. Where did that lumber come from?

A. He was selling lumber right there, Earle for Ketchum, as I understood, and we had an account with each other and settled in that way. Of course, whatever I could use was so much cash to me.

Q. You gave a deed; was the deed recorded?

A. I suppose it was.

Q. Can you give a description of this property?

A. I was asked as to the description, and I marked it on a piece of paper so I would not make a mistake.

(Counsel for Mr. Kelly objects. The deed is not produced.)

Q. I will ask the witness, By refreshing your memory by looking at this memorandum can you give the description of the property after? If you can, please do so.

(Objected to.)

A. It was the S. E. ¼ of the S. W. ¼, the S. W. ¼ of the S. E. ¼, the S. E. ¼ of the S. E. ¼, sec. 23, t'p 22, R. 8; S. W. ¼ S. W. ¼, sec. 24, t'p 22, R. 8; N. W. ¼ of the N. W. ¼, sec. 25, t'p 22, R. 8, all in the same town. and range. I would say, of course, that thirteen or fifteen acres were reserved.

Q. Do you remember in which part of the property those were?

A. There were two acres and a half in cemetery lots. That was on the southwest of sec. 23, and there was, I think, thirteen acres I had deeded to Knuteson lying on the east side of the river, on sec. 24. That cemetery lot is on the southwest corner of the west half of the southwest quarter of sec. 23.

Q. Was the depot located upon this land?

A. Yes, sir.

Q. At what time was it so located?

A. It was the first part of November, 1873.

Q. Immediately after your making this contract?

A. Yes, sir.

Q. Were there any people in that neighborhood, excepting yourself, at that time?

A. Oh, yes, sir; in the neighborhood.

Q. I mean was there any congregation of people, any town there, at that time?

A. No, sir.

Q. How is it now?

A. There was one house on the place I sold.

Q. How is it now with this land you sold?

A. There is quite a little village there.

Q. How large a village?

A. That would be guess-work. I should say from three to five hundred; I don't know exactly.

Q. Are those houses now there located on small lots that have been cut up from this piece you sold?

A. Most of them; yes, sir.

Q. There was no town there, you say, before the railroad went through?

60 A. No, sir.

Q. And the present town is the county-seat, I understand you to say?

A. Yes, sir.

Q. Is there a court-house there?

A. No court-house built in the county. The business is done there.

Q. Quite a thriving village, I suppose?

A. Yes, sir.

Q. Is it a village that has grown up on account of the railroad? Has it anything to do with it?

A. It has all been built since the railroad came there.

Q. Do you know anything about the prices at which land is now held there—lots in the town of Whitehall? For how much can they be purchased?

A. I don't know. That is something I don't know anything about.

Q. Do you know of the sale of any lots there since this deed of yours?

A. Yes, sir; I know there has been lots sold there.

Q. Do you know the prices any of them brought?

A. I know the prices of some.

Q. State the prices of any you may happen to know.

A. I have known of—well, there was one that I let a man have; sold it for $40—that is, for the same as $40. I have heard of some sold as high as $200.

Q. Has there been any lot sold near the court-house as high as $600?

A. There was one part of a lot, there was a lot—I guess it is all in one lot—sold to three different parties for $600. That was next to the post office. I heard them talk about it there.

Q. When was that sold?

A. Something like two or three years ago.

Q. Was the depot located there?

A. Yes, sir.

Q. Who put it up?

A. I suppose the company. I don't know anything about that.

Q. By the company you mean the Green Bay & Minnesota Railroad Company?

A. I suppose so.

Cross-examined by Judge CATE:

Q. What town in the town of Lincoln, what village, are you testifying about?

A. Whitehall.

Q. Have you any personal knowledge of the value of those different lots or how much they sold for?

A. Nothing; only from hearsay.

Q. Reputation?

A. Yes, sir.

Q. The entire consideration was paid to you?

A. For the property? Yes, sir; that is all settled.

Q. By whom was it paid?

A. It was paid by Earle—by Mr. Ketchum through him, I suppose.

Q. You understand the entire consideration was paid by Ketchum?

A. Yes, sir.

Q. Would you have been satisfied with the deed if it had been made to Ketchum and Kelly both?

A. Yes, sir.

Q. You thought it ought to be made to Kelly?

A. I mentioned that I supposed they were the men that were putting the road through. Earle answered it was all right. I supposed it was both.

Cross-examined by Judge ELLIS:

Q. Do you know whether Mr. Earle was an officer of the company?

61 A. Not that I know of.

Q. He was acting for himself or Ketchum then entirely, was not he?

A. He was acting, I suppose, for Ketchum.

Q. Do you know whether he was really an authorized agent or not?

A. Nothing more than what was said. He came, in the first place, with Ketchum, and afterwards acted for him.

Q. What proportion of this consideration was paid in lumber?

A. I presume, I could not tell exactly, that I took $1,000 in lumber.

Q. What was the whole consideration?

A. $3,500.

Q. You took $1,000 in lumber?

A. I think I did; perhaps more.

Q. Whose lumber was that?

A. I got it from Earle. I supposed he was there as agent for Ketchum, and I think at that time Ketchum owned the lumber yard. He was dealing in lumber.

Q. Then it belonged to Earle or Ketchum, or both?

A. I suppose so.

Q. What other consideration did you receive besides the lumber?

A. Money, or the same as money.

Q. Whose money?

A. I suppose Mr. Ketchum's.

Q. Who paid it to you?

A. Mr. Earle, I think, the whole.

Q. Was all the remainder paid in money, except what was paid in lumber?

A. I think so. Well, I took one lot, just the same.

Q. Whose lot was that?

A. Chesround's. I had some dealing with him; he came to me and wanted a lot. We made a change, and I endorsed it on the note. It was in this property.

Q. It was owned by an individual, not owned by the company?

A. No, sir.

Q. All this consideration came from Ketchum and Earle?

A. So far as I know.

Q. You intended to deed the property to Ketchum?

A. I deeded the property to Ketchum.

Q. Did Mr. Earle say anything to you about what that land was wanted for?

A. The understanding was to locate a depot there; that was specified in writing where it should be located; the description of the land was given. It should be located on this land, and within a certain time—that the depot should be built within a certain time.

Redirect examination:

Q. Did Mr. Ketchum hold himself out to you to be an officer of the Green Bay & Minnesota Railroad Company?

(Counsel for Mr. Kelly objects to the question as incompetent.)

Q. I will alter the form of the question. What declarations, if any, did Ketchum, in regard to these transactions, make to you as to his connection with the Green Bay railroad, if any such there were?

A. I don't remember. I knew in different ways he was acting as president of the road. I had seen a short time before that, where there was a meeting to vote bonds on the town, he was then acting as president of the road.

Q. Did he make any statement to you that if you conveyed this property he, on behalf of the road, would see that the depot was located upon it?

62 A. I don't know that he did. The understanding, of course, was this, that the depot should be located upon this point.

Q. You say this was the understanding. How did such an understanding come about? Did Mr. Ketchum say that he would locate it there?

A. He said it would be located there.

Q. He made that statement?

A. Yes, sir.

(Signature of witness waived.)

Deposition of Benjamin H. Merrill.

BENJAMIN H. MERRILL, called by the plaintiff, being sworn, testified:

Q. What is your name?

A. Benjamin H. Merrill.

Q. Where do you live?

A. In the village of Merrillon, Jackson county, Wisconsin.

Q. What is your occupation?

A. I am now a lumberman and farmer.

Q. You are of legal age, I suppose?

A. Yes, sir.

Q. How long have you lived in Merrillon?

A. Going on eleven years.

Q. Have you ever owned any property there?

A. I have.

Q. Have you owned any in your own name alone?

A. I have.

Q. Have you owned any in partnership with any other party?

A. I have, with my brother, L. G. Merrill.

Q. Can you give a description of any piece of property that you owned in the village of Merrillon in the month of July, the year 1877, or that you owned with your brother?

A. We owned the S. W. ¼ sec. 23, T. 23, R. 4.

Q. Did you own that alone, or with your brother?

A. With my brother.

Q. Do you still own that property?

A. No, sir; I don't consider that we do.

Q. Does your brother own it?

A. No, sir.

Q. How much property was embraced in that description you gave—how many acres—in July, 1877?

A. That we owned?

Q. Yes, sir.

A. I think about thirty acres. It might have been a little more or little less.

Q. Did you convey that property away?

A. We did, to Mr. Kelly.

Q. For what reason or consideration did you convey it to D. M. Kelly?

A. On a contract made with L. G. Merrill, Kelly, and the Green Bay & Minnesota Railroad Co. You see the first name was the Green Bay & Lake Pepin road, and it was changed to the Green Bay & Minnesota.

Q. It runs through this thirty acres that you speak of?

A. Yes, sir.

Q. Will you please state the situation of the road in reference to this thirty acres—whether it has any depot on it, or how it is with relation to this thirty acres you speak of.

A. The depot is on the southwest—no, the depot is on this very piece of property.

Q. What consideration did you get for this thirty acres?

A. The consideration that they would build a depot.

Q. Any other consideration?

A. Not that I know of.

Q. Did you get a dollar, except the promise the railroad would locate a depot there?

A. No, sir.

Q. You thought, I suppose, that was sufficient consideration, did you?

A. Yes, sir.

63 Q. Explain why that was a good consideration.

A. My brother had agreed to give this property, as I understand it, for building that road, with $50,000 besides.

Judge CATE: With whom?

A. With Mr. Kelly and the Green Bay & Lake Pepin road. I saw that on the contract—that they were to build the road. (Objected to as incompetent by counsel for Mr. Kelly.) That is, they were to build the road and L. G. Merrill was to give them or deed them this property.

Q. You made the deed with your brother, did you?

A. Yes, sir.

Q. You knew, of your own knowledge, what the consideration was?

A. I calculated I did.

Q. You now know, of your own knowledge, the consideration was as you have stated?

A. That is all the consideration I know anything about.

Q. You were a married man at the time?

A. Yes, sir.

Q. Did your wife join with you in the deed?

A. Yes, sir.

Q. Did your brother's wife join in the deed?

A. Yes, sir.

Q. You made a complete and absolute deed of the property, with the consideration the road should be built through there and have a depot on it?

A. I don't know as it is mentioned in the deed; that is what I supposed it was for.

Q. You never got any money other than that for it?

A. No, sir.

Q. Have any of those acres been divided up into lots since, to your knowledge?

A. Yes, sir.

Q. Have any of them been sold—any of the lots?

A. I think they have.

Q. Who sold them?

A. Mr. Kelly sold a lot, I believe, for a printer's office. It is merely information; I have not seen the deed.

Q. Did Mr. Kelly, at the time of this transaction between you and your brother and himself, make any statement to you that he was an officer of that road?

A. I don't know that he did to me particularly.

Q. Did you know that to be a fact at the time?

A. I thought I did; it was so reported.

(Objected to by Judge Ellis.)

Q. Do you know why that deed was made out, as you say it was made out, to D. M. Kelly individually?

A. I don't know as I do.

Q. Did you ever make any inquiries about it?

A. I talked to my brother about it. I don't suppose that has anything to do with the case.

Q. You joined in the deed. Why did you make a deed to Kelly yourself?

A. I supposed he had a right to it; that he was the road and the manager of the road and it was all right to deed it to him.

Q. Did you suppose you were deeding it to him for his individual use and benefit?

A. I supposed that it would go to the road.

Q. Did not Kelly so represent it to you at the time?

A. I don't know as he did.

Q. You don't recollect about that?
A. No, sir.
Q. Did he promise the depot should be put on it?
A. I think it was in the contract there was a depot to be put on it.
64 Q. How large a place is Merillon?
A. The population, I believe, was taken at 1,000, but considered between 600 and 700 this summer.
Q. How many were there there when you sold this land?
A. I don't know as I could tell, but I should judge there were perhaps 300.
Q. The village has about doubled, then, since the railroad has been there?
A. I should think so.
Q. What effect has the location there had upon the value of this thirty acres you speak of?
A. They are not selling lots there now.
Q. Not since this suit was begun, but how was it before this suit was begun?
A. There was not scarcely any sale.
Q. Have there any lots been sold there?
A. Yes, sir.
Q. How many?
A. I don't know as I could tell how many.
Q. What was the land held at, at the time they were sold; on this thirty acres at what rates were lots held in the market by Kelly or his agent after he took this deed?
A. I think they were $50 or $25—perhaps as low as $25—to $130.
Q. How many lots were there in this thirty acres?
A. I could not tell you.
Q. Have you any idea?
A. I don't know as I have; no.
Q. Did you believe, at the time you joined in this contract and deed between you and your brother and Mr. Kelly, that you were conveying the property to Mr. Kelly for the benefit of the railroad company?
A. I did think so; yes, sir.

Cross-examined by Judge ELLIS:

Q. Were there not two contracts made instead of one?
A. I think there was.
Q. You now remember there were two?
A. Yes, sir.
Q. Why were there two contracts instead of one?
A. Well, for the reason there had been some changes made since the first one was made with my brother; some understanding, I believe.
Q. Is it not a fact that one of the contracts was for the railroad company and the other for Kelly?
A. I did not so understand it.
Q. You did not understand it so?

A. No, sir.
Q. Were the two contracts made at the same time?
A. No, sir; I think not.
Q. If not made at the same time, when were they made?
A. One of them, I think—it is only from memory, I have not had it in my possession—was made before the railroad was built there, and the other was made in 1877: but I am not certain.
Q. How long between the two dates?
A. One was 1873, and the other 1877.
Q. Did you keep copies of those contracts?
A. No, sir; I have seen them.
Q. Do you know who drew those contracts?
A. No; I don't.
Q. You say you have seen them?
A. Yes, sir—that is, I supposed they were the contracts.
Q. Don't you know they were drawn at the same time?
A. No, sir.
Q. Are you sure they were not drawn at the same time?
65 A. No, sir; but I think they were not. I am not certain; I calculated they were different dates.
Q. Don't one of those contracts run to the railroad company and the other to Mr. Ketchum?
A. They might; I don't understand it so.
Q. They might have done so?
A. Yes, sir.

(Objected to; the contracts are the best evidence.)

WITNESS: This contract I saw was got up by L. G. Merrill.

Q. Where are those contracts?
A. I think they are in L. G. Merrill's safe.

(All this testimony objected to by the plaintiff.)

Q. Do you know how the deeds were made? Were you present?
A. Yes, sir.
Q. Were there two deeds?
A. I don't recollect that there was.
Q. Don't you remember?
A. There were deeds given to the Green Bay & Minnesota railroad of rights of way.
Q. There was one?
A. Yes, sir. I think so.
Q. Signed by yourself and your brother and your wives?
A. Yes, sir. I think so.
Q. Depot grounds included?
A. I think the depot grounds. I am not certain whether there was a deed given separately for the depot grounds to Mr. Kelly or not.

(Objected to by plaintiff. Let the deeds be produced.)

Q. Then there was a deed made besides to Ketchum and Kelly, was there not?

A. I don't think it was to Ketchum. I think it was to Kelly.
Q. That was given at the same time, was it not?
A. At the same time as the others?
Q. Yes, sir.
A. I don't recollect whether there was more than one deed given at that time, but there was other deeds given, I presume. I rather think there was more than one deed given at that time.
Q. Was not one of the deeds the deed that conveyed the right of way and the other a deed to Ketchum and Kelly?
A. I think they was. I know we gave deeds to the company and also to Kelly.
Q. Did you ever have a talk with Kelly before these two contracts were made?
A. In regard to what?
Q. On the subject of the contracts?
A. I don't know that I did. I don't recollect that I did.
Q. Who did you talk with before making the contract?
A. My brother done the trade—L. G. Merrill.
Q. Then was all the contracting done by your brother instead of yourself?
A. I think it was. I don't recollect of any being done with me.
Q. Did you not make the contract yourself with Mr. Kelly or with the company?
A. No, sir. I don't recollect of making the contracts.
Q. Were you present when the contracts were made by your brother?
A. No, sir; I think not.
Q. Then have you any knowledge of the making of the contracts except what your brother told you?
A. Yes, sir.
66 Q. You did not make the contract and you were not present when the contract was made. How do you know they were made?
A. I saw the contracts and saw the names signed to them.
Q. Can you now give the dates of those contracts?
A. I don't think I could.
Q. Were they not prepared the same day?
A. I think not. I am not certain.
Q. You saw them at the same time?
A. Saw them both together.
Q. Where?
A. In the hardware store at Merrillon.
Q. Who had them?
A. The last time I saw them L. G. Merrill's son had them.
Q. Who was he holding them for?
A. For his father, I suppose.

(Signature waived.)

Deposition of Isaac A. Briggs.

ISAAC A. BRIGGS, called by the plaintiff, being sworn, testified as follows:

My name is Isaac A. Briggs; I reside in Arcadia, Trempealeau county, Wisconsin.

Q. Where is Arcadia?

A. In the west edge of Trempealeau county, on the Trempealeau river.

Q. How long have you lived there?

A. Ten years.

Q. You are over twenty-one years of age?

A. I guess so.

Q. What is your occupation?

A. I am a farmer. I have practiced medicine some portion of my life since I was twenty-one.

Q. Did you own any part or the whole of the W. ½ of the N. E. ¼ and the S. W. — of the N. W. ¼, and the N. W. ¼ of the S. W. ¼, the S. E. ¼ of the N. W. ¼, the N. W. — of the S. E. ¼, in sec. 32, t'p 21, R. 9?

A. I believe so.

Q. Where is that property situated?

A. In and about the village of Arcadia.

Q. About how many acres are there in the property I have described?

A. I don't recollect how many you did describe. That would make four forties. I don't know but you have given in the N. ½ of S. W. ¼, which would make twenty acres more, about 180 or 190 acres.

Q. When did you own that property?

A. I owned it at the time that railroad was surveyed through there.

Q. About what time was that?

A. I believe in 1873.

Q. Does that railroad run over that property now?

A. It does.

Q. Have they any depot located on it?

A. They have.

Q. Do you still own the property?

A. No, sir.

Q. When did you convey it away?

A. About that time.

Q. Please state the circumstances of the conveyance, why you conveyed it, to whom, when. Tell all about it in your own language.

A. I think that I conveyed the land to Mr. Kelly, Mr. Hiles, and Mr. Ketchum.

Q. Do you mean the defendants here?

A. Yes, sir. And they held the deed for a short time, and I was in some manner informed that Mr. Hiles bought Mr. Kelly's interest, and the deed was brought back to me without being recorded,

and they requested that a new one should be made to Hiles
67 and Ketchum, perhaps. I don't remember the particulars.
I think that was the way of it; and, owing to another little discrepancy in the description of that N. ½ of the N. E. ¼ of the S. W. ¼, on account of the street cutting it off, we altered the deed a little and gave them a new deed, and I think the deed ran to Hiles and Ketchum.

Q. What was the consideration of the deed—the original consideration?

A. I guess—I don't remember that, but I think $500. At least, they paid me $500 cash, and I considered the land was worth more than that.

Q. How much more?

A. I considered it—well, really, it is pretty hard to tell. We had curious ideas in those days, and expected the railroad was going to make us all rich, &c., but at any rate that is all the money I got out of it, and I took into consideration the benefit of having the railroad come through.

Q. Was that the agreement between you and the parties with whom you made the deed—the railroad should come through?

A. I think so. I think they agreed to build a depot where I should set a stake, and they did so.

Q. What railroad was that?

A. Green Bay & Minnesota railroad, formerly called Green Bay & Lake Pepin railroad.

Q. When was this negotiation as to the depot, location of the road, &c.? Was it prior to making the deed—before you made the deed?

A. I think so. I think the road was originally surveyed on the west side of the river.

Q. You say the road was originally surveyed over on the other side of the river?

A. Yes, sir.

Q. What made them change it?

A. I tried to induce them to think the other was the shortest route and best side, and thought I would give them a good chance for a town, &c.

Q. You wanted to make a little speculation?

A. Yes, sir.

Q. Do you own any other land near there?

A. Yes, sir; about as much more as I gave in the deed.

Q. In that immediate neighborhood?

A. Yes, sir.

Q. You valued the land at what, did you say?

A. I really don't know as there was any sum named. I should not have considered it very valuable if the railroad had not come.

Q. Don't you value it as high as $10 an acre?

A. I did, if the railroad came through it. It ought to be worth that or more, although I afterwards sold some for less money than that.

Q. You sold this 190 acres for $500. That is the only consideration mentioned?

A. I think so. I could not say about that.

Q. What was the main consideration of the deed in your mind?

A. I considered the benefit *of* the road was going to be to me a good deal more than it really turned out to be.

Q. Would you have sold the land for $500 to anybody but the railroad company?

A. I don't think I would.

Q. Were you paid that $500?

A. Yes, sir.

Q. Who paid it to you?

A. Hiles or Ketchum; I don't remember which.

Q. How was it paid?

A. By draft.

Q. What sort of a draft?

68 A. I don't recollect on what bank—some bank.

Q. Individual draft or what?

A. Individual draft.

Q. Of Mr. Ketchum or Mr. Hiles?

A. I think it was Ketchum. I could not swear whether it was Ketchum or Hiles.

Q. Do you remember on what bank?

A. No.

Q. Was the draft paid?

A. Yes, sir.

Q. You say this was about the year 1873?

A. I think so.

Q. What part?

A. July, I should think. I ain't positive about dates, but I think July, 1873, was the time they commenced operations in our vicinity.

Q. Did they build the depot where you wanted it?

A. Yes, sir.

Q. That was on part of this land, was it?

A. Yes, sir.

Q. What is on the land now—the rest of the land?

A. The village of Arcadia on part of it and part remains as it was, unoccupied.

Q. You spoke of the village of Arcadia. Is that a pretty considerable village?

A. It is not a large village.

Q. About how many people are there?

A. About 1,000.

Q. About how many people were there before the railroad came?

A Less than 200.

Q. That growth, then, has all been since the railroad came? Do you know about whether any of these lots have been sold since you conveyed the property to Hiles and Ketchum?

A. Yes, sir; sold some lots—considerable many—I should think.

Q. Do you know of your own knowledge about any of the prices they got for them?

A. I guess there was a good many of them sold for $50 a lot.

Q. About how many lots were there in this piece you conveyed?

A. I could not tell you exactly.

Q. As many as 100 lots?

A. I should think there was about ten or a dozen blocks of perhaps about eight lots in a block.

Q. Somewhere from 80 to 100 lots?

A. Perhaps.

Q. Is the price still as low as that, $50 a lot?

A. Yes, sir; the price is lower than it has been.

Q. They sold some higher than that?

A. Considerable.

Q. How much higher?

A. I presume they sold them as high as one for $100.

Q. When you say they whom do you mean?

A. Hiles and Ketchum. Kelly was perhaps interested at one time. I think not. I think Hiles bought him out.

Q. Did you know of your own knowledge, at the time these gentlemen were dealing with you for the purchase of this land, they were officers of the Green Bay & Minnesota railroad?

A. Only by hearsay.

Q. Was that their general reputation in that part of the country?

A. Yes, sir.

Q. Did you deal with them on the basis that they were such officers?

A. I supposed they were.

Q. Did they agree and promise that they would locate the railroad depot there at that time?

A. I believe they did.

Q. How far does the railroad run through that property—how long a distance?

A. Nearly half a mile, I should think.

Q. Is there any hotel there now?

A. Yes, sir.

69 Q. What is the name of it?

A. There is one called the Commercial, one the Arcadia, one Mineral Spring Hotel.

Q. Is there a spring there on that property?

A. No; I don't know any very prominent spring; there are several on the lands, but not anything that is termed a mineral spring.

Q. There is a mineral spring near there, is there?

A. Yes, sir.

Q. Is there a hotel there?

A. Not exactly at the spring; it is near the village. The spring is half a mile out, I think.

Q. When you made this conveyance of this property did you believe and understand that you were conveying it to the railroad company or its authorized officers?

A. I was of that impression rather from the fact that the town had donated $50,000 in bonds for the same purpose, of inducing the railroad to come through.

Q. You thought this gift of land was an inducement to the railroad to come through?

A. I thought it would be a little help; whether it was or not I am not able to say; but we understood that they were the Green Bay & Minnesota Railroad Company——

Q. Who?

A. Ketchum, Hiles, and Kelly. When they got down to our place I believe Hiles had not much to do with the eastern part; I never knew who the officers were, only by hearsay, as I know of, at all.

Cross-examined by Judge CATE:

Q. You say you understood they were officers of the railroad company—I mean Ketchum, Hiles, and Kelly?

A. Yes, sir.

Q. What office did you understand Mr. Hiles held in the company?

A. Perhaps no particular office.

Q. You did not understand he held any?

A. Perhaps he was a sort of a general paymaster.

Q. Is not it a fact that he was just simply a contractor to build the road by contract?

A. I afterwards heard that was the case; but I did understand that he was really paymaster, perhaps nothing more than that.

Q. That is an impression that you had—that is all?

A. That is all.

Q. What office did you understand Mr. Kelly held in the company?

A. I understand he was the principal director.

Q. Whom did you understand that from?

A. Nobody in particular. I can't tell you.

Q. He did not tell you he was principal director, did he?

A. No, sir.

Q. Did not you know at the time he had simply a contract to build that road?

A. No, sir.

Q. Whom did you have the conversation with leading to the trade for the land?

A. Ketchum and Hiles principally. I don't know that I had any in regard to deeding the land with Kelly.

Q. How long had you lived there at that time?

A. It is most seven years.

Q. At that time?

A. It is most seven years now; I have been there about thirteen years.

70 Q. What was that land used for prior to that time?

A. Sheep pasture.

Q. What did you consider it worth, as lands were selling in that vicinity, before the railroad came there at all?

A. It is pretty hard to determine; there was not a very great deal of sale for lands.

Q. Had not been much sold?

A. No, sir.

Q. Was not the Government land adjoining yours?

A. There were a few parties up and down the river.

Q. Adjoining this you sold?

A. I think one party joined; I don't know but two.

Q. What do you think that land was worth, in cash, before the railroad came there at all and before these gentlemen came to talk with you about it?

A. When I bought it I paid $3.50 an acre, and thought I was getting a good bargain.

Q. What do you think it was worth at the time you sold it?

A. I could not tell. We thought after we had a prospect of a railroad it would be more valuable.

Q. At the present stand-point, looking back at it, don't you think you sold that land for all it was worth, every dollar?

(Objected to by plaintiff.)

Q. What is your present judgment as to whether you did not sell that land for all it was worth?

A. Well, I hardly should think $500 would have been a fair consideration for it.

Q. How much more was a fair consideration?

A. I afterwards sold——

Q. I don't care what you afterwards sold. Give me your judgment.

A. Such land was sold at $5 an acre, perhaps.

Q. Was sold at that time? Who sold it for that?

A. In that vicinity, $5 an acre, such land as that, at that time.

(Objected to by plaintiff—all that kind of testimony.)

A. I sold similar lands, 700 acres.

Q. I mean of this character of land.

A. Similar land; yes, sir. I sold for other parties. I was agent for several parties.

Q. About the time you sold yours?

A. Yes, sir.

Q. After the road came or before?

A. Both after and before.

Q. Did you sell it for any higher price after the railroad was built than before.

A. I sold 200 acres where Independence now stands for $4.50. The next year after the railroad came I sold a couple of acres more, near our place, for $5 an acre—only fifty cents more an acre; we considered it about the same thing.

Q. Are you prepared to say that land right adjoining this in that vicinity, of like quality and situation, was worth $5 an acre at that time, independent of the railroad?

A. I suppose it could have been bought adjoining this, perhaps, after the prospect of a railroad——

Q. I am speaking of before that—independent of the railroad altogether.

A. Before that $5 for land up and down the river would have been a fair price.

Q. Such land as this?

A. The same thing, I refer to.

71 Q. Did the principal inducement to the sale of this land arise from the fact you thought the balance of your land would be worth more by building the railroad over there?

A. One would naturally draw that conclusion.

Q. Did you draw that conclusion?

A. I suppose I did, or else I should not have made the bargain.

Q. You were as anxious to have the trade made as they were?

A. I guess so.

Q. The depot was located upon this land?

A. Yes, sir.

Q. You say they contemplated running it on the other side of the river?.

A. Yes, sir.

Q. You represented it was better to come on this side?

A. Yes, sir.

Q. Was it in fact better, do you think?

A. I think so.

Q. You thought it was no injury to the company to bring the road over on this piece of land?

A. I think it was an advantage; I think it was a little nearer.

Q. It was a cheaper route?

A. I thought it was a little nearer.

Q. Did you subsequently sell the balance of your piece?

A. No, sir.

Q. You have it yet?

A. I sold some of it in village lots.

Q. Do not you think it would be a pretty good investment if you could have sold the rest of it for $500 that you retained? Don't you wish they had taken it all?

A. No, I think not; I sold it to better advantage, what I had left, than what I sold, although it was a little the best portion.

Q. On the whole, are you not well satisfied with the sale you made, $500?

A. I shall have to be.

Q. What I want to get at is, don't you think it was about a fair value for it, as the world goes?

A. In consideration of the railroad, I was perfectly satisfied. But there was a consideration for the railroad, and the getting of it there was an inducement for me to sell, of course; and I have sold a con-

siderable portion for $50 and $100 a lot; there is about half of the village on my land and half on theirs.

Q. Have you talked with the present receiver in regard to this matter—Case, Timothy Case?

A. I don't recollect ever talking with him but once.

Q. Or any of the agents?

A. But once.

Q. When was your attention first called to the matter?

A. I think last winter or spring some time he came along and had a talk with me; that was the whole we ever talked.

Q. You have a pass over the road, of course?

A. A portion of the time; Mr. Ketchum gave me a pass once. Last year I had a pass, and this year I had a pass, but I have mislaid or lost it; I have none now that I know of. I rather tried to help the road along what I could, and they have been in the habit of giving me a pass.

Judge ELLIS: Have you had any talk with Mr. Kelly about this matter?

A. I don't recollect.

Q. At any time?

A. I don't recollect talking with him about it. I have talked with Mr. Kelly occasionally when I met him; we have not met for a long time.

Q. In regard to the sale of this land?

72 A. No, sir; I think the talk was all with Hiles and Ketchum about the land; I think it was all, as nearly as I can recollect; it has been some time since; I don't remember everything just right, perhaps.

Q. Did Mr. Hiles agree that the railroad and depot should be located on this ground?

A. I don't know as he did; I rather think he did, though I aint certain.

Q. Do you know he did?

A. No; I don't remember certain about that, but it seems to me that Hiles and Ketchum were together when the arrangement was made; as near as I can remember that was the talk.

Q. This deed you gave was made out according to your agreement, was it not?

A. Yes, sir.

Q. That conveyed two-thirds of the land to Mr. Hiles and one-third to Mr. Ketchum, did it not?

A. I don't remember about that—about the division of it.

Q. It conveyed part to Mr. Hiles and part to Mr. Ketchum, did it not?

(Objected to by plaintiff. Let the deed be produced.)

A. The second deed might have run to Hiles, Ketchum, and Kelly, but my impression is it ran to Hiles and Ketchum.

Q. I ask you if this deed conveyed part of this land to Hiles and part to Ketchum—that is, a portion, an undivided portion, to Hiles and an undivided portion to Ketchum?

A. It was an undivided portion, I think, without question; I don't remember about the deed, and I don't remember whether I wrote the deed myself; I think not. I think some other one wrote the deed and I executed it. There was considerable deed writing; Ketchum and Hiles came to my house and we made out over thirty deeds for lands in the village—for land that had been sold in one day. I don't remember about the particulars of the deeds; it strikes me this was deeded to Ketchum and Hiles.

Q. You say this deed was made in accordance with the bargain, the contract, whatever it was?

A. Yes, sir.

Redirect examination:

Q. Did you believe and understand in your own mind, at the time you made this deed, that you were making the deed to these gentlemen for the use and benefit of the railroad company?

(Objected to by counsel for Mr. Hiles, to the witness stating his belief; let him state the facts.)

A. It is a pretty difficult question to answer, come to look it over. The impression, the general impression, was that all that was done was done to forward the interests of the road, and I supposed they were the road or the company building the road, &c. No question being asked me, I knew nothing of all these facts; but I thought if I deeded the land and gave this amount to the road I considered it a benefit to the company and the road; but that was only a matter of opinion. I don't know as anybody said it would be so, or anything of that kind, further than that was my impression.

Questions by Judge CATE:

Q. Was it not a part of your interest and part of the consideration that you supposed Hiles and Ketchum and Kelly would lend their influence to build up a town and settle up around it, and your own property become more valuable?

A. Yes, sir.

73 Q. And you expected their co-operation to build up a town?

A. Yes, sir.

PLAINTIFF'S COUNSEL: When this case was commenced we asked for an injunction to restrain the conveyance of any of this land until the determination of these issues; which injunction was granted upon the support of some affidavits. The one I hold in my hand—the affidavit of Ebenezer Thurston—is one. Since the time that was taken in support of that motion he has suddenly died, and we wish to offer here his affidavit as it was originally taken, which I will support by proof. I will call Mr. Theodore G. Case.

Deposition of Theodore G. Case.

THEODORE G. CASE, called by the plaintiff, being sworn, testified:

Q. What is your name?

A. Theodore G. Case; residence, Green Bay; occupation, lawyer. I am of lawful age.

Q. For whom are you doing your business principally at present?

A. For the receiver of the Green Bay & Minnesota railroad—Timothy Case.

Q. Were you doing law business for him on the 17th day of July, 1879?

A. I was.

Q. State whether on that day you were present at the time when this affidavit which I hand to you—this paper—was executed?

A. I drew the paper myself; saw Mr. Thurston sign it; heard him swear to it.

Q. You know, then, this paper I now offer in evidence is the affidavit of Ebenezer Thurston made by him on the 17th of July, 1879?

A. I do.

(The respective counsel for the defendants object to the introduction of the paper in evidence.)

Taken subject to objection, and marked "Exhibit No. 1."

Adjourned until Wednesday morning, July 28th, 1880, at ten o'clock a. m.

WEDNESDAY, *July 28th*, 1880—9 o'clock a. m.

All parties and their counsel present pursuant to adjournment.

Deposition of Marquis Wood.

MARQUIS WOOD, called by the plaintiff, being sworn, testified:

My name is Marquis Wood. I reside in the town of Little Wolf, Waupaca county.

Q. What is your occupation?

A. I have practiced medicine all my life pretty much.

Q. You are of lawful age?

A. Certainly; nearly seventy.

Q. How long have you lived in that part of the country?

A. About twenty-six years.

Q. Is there a village there where you live?

A. Within two miles.

Q. Have you owned land in that region?

A. Yes, sir.

Q. Does any railroad pass in the neighborhood of where you live?

A. Green Bay & Lake Pepin, the railroad, as it was called first, goes through that place.

Q. Is there a station there?

A. Yes, sir.

Q. What is the name of that station?

A. Manawa.

74 Q. Do you own certain land in that region described as the W. ½ of the N. E. ¼ of sec. 21, and the N. ½ of the N. E. ¼ of the S. E. ¼ in the same section?

A. Yes, sir.

Q. And also this property, 100 acres in secs. 21, 23, 13? Do you own that also?

A. I own the W. ½ of the N. W.—let me see, it was——

Q. Being twenty acres in all?

A. Yes, sir; 100 acres, the 20 and the 80.

Q. How many acres were there in all?

A. 100 acres in all.

Q. When did you own that property?

A. I owned it for twenty-six years.

Q. Do you still own it?

A. No; I don't own it now. I let the railroad company have it.

Q. What railroad company?

A. The Green Bay & Lake Pepin road.

Q. When did you let the railroad company have it?

A. It must have been five or six years ago; I don't remember exactly. It must be six or seven years ago, about 1873 or 1874—that is, I don't exactly know the time.

Q. Was the track of the railroad laid through that land when you deeded it, or was it about to be built there?

A. About to be built.

Q. At the time you deeded the land?

A. Yes, sir.

Q. How much money did you get for the land when you deeded it?

A. Not any. I made a gift of it to the company.

Q. That was for what reason?

A. I may explain that a little. There was a man by the name of Micklejohn; there was two routes surveyed, one by his place that didn't come by our place. It could not well be located on that route on account of objections. Ketchum told me that he and Kelly had called upon Micklejohn, and he was for getting out of the thing; was not willing to pay more money. They found it would cost $11,000 more to take it by Micklejohn's than the other route. Ketchum and Earle came to my house and told me if I would do something handsome they would take that road over my land, and then they went on to say that the company could not put the road any further for want of means. There was much said about that. He said the company was poor.

Q. What did they want to use the land for—to get means with?

A. That was the idea—we must do all we could to get it through. We was all anxious, and he said he would want at least twenty acres for the depot at our place, as it was a good point, equally as good as New London or Grand Rapids. He said he must have twenty acres. I told him about where I would like to have the depot. I gave twenty acres there.

Q. It all went into one deed?

A. He made a minute of it. The deed was not made.

Q. You offered to give him, then, twenty acres?

A. I gave him another forty. He made a minute of that. I told him he might have the other forty; that made 100 acres in all.

Q. You gave that to the company because you wanted the railroad to come through there?

A. Certainly.

Q. And did the railroad come there?

A. It did.

Q. Did they locate the depot there?

A. Not on the twenty acres.

Q. Did they locate the depot on this land you gave—this 100 acres?

A. Yes, sir; only they did not put it on the twenty acres. He said the company would require twenty acres, because it was
75 a good point. That looked like a large piece of land for a depot. Still, I told him they could have it.

Q. Did they locate the track over the land—over the whole 100 acres?

A. No, sir; over the south end.

Q. How much in length of road was there on this 100 acres?

A. It runs through the eighty.

Q. How much would it be?

A. Probably it would run half the width—quarter of a mile, I should think; I am only guessing at that.

Q. Now, you say at the time Ketchum and Earle came to you, you offered to let them have 100 acres, and Ketchum made a memoranda?

A. Yes, sir.

Q. What happened afterwards? Did you convey it afterwards?

A. Yes, sir. I can't remember whether it was one, two, three, or four weeks afterwards. Some time afterwards he came and brought the deed and had the deed made out.

Q. This was about the year 1874, or 1873?

A. Yes, sir.

Q. Where did Ketchum see you when he came to get the deed executed?

A. He came to my house.

Q. Were you in the house?

A. Yes, sir.

Q. What part of the house?

A. I was in the adjoining room.

Q. Were you in good health at that time?

A. Not in very good health. I was able to sit up. My wife was not able to sit up when Mr. Ketchum was there. We had to go to Squire Scott to have the deed acknowledged.

Q. Were you able to go out and do that?

A. The deed was made out at my house. Mr. Ketchum brought the deed. I don't think I read it myself. I ought to have made it closer. I had a good deal of confidence in the matter. He read it to me. I thought it was all right, but that idea about it being made to these men never came into my head. It was called railroad land by everybody, and I conscientiously now and then believed I had

deeded it to the railroad company—the whole 100 acres. There was a little difficulty afterwards about it, that twenty acres. I had a tax-title deed, and I observed to Ketchum that I rather objected to having the deed to say 100 acres. I thought of giving a quitclaim, but he said it made no matter; he did not care anything about it. I thought they would make me no trouble. I warranted it, although I only had a tax title. I thought there would be no difficulty, but if there should be it would be better to have the deed a quitclaim deed of the twenty acres.

Q. Did you receive any money at all for that land, or any of it?

A. No, sir.

Q. Did your wife join in the deed with you?

A. Yes, sir.

Q. Did she do it simply because you told her, or did you tell her there were advantages about it?

A. We considered it was right for her to sign the deed, and our names are both to the deed and to the contract.

Q. This 100 acres is the property you described in the beginning of the testimony?

A. Yes, sir.

Q. What has been done with the property since—those 100 acres?

A. I have been out of health for the past four years, and I don't exactly know, but they call it railroad lands.

Q. Has any of it been sold?

76 A. I don't know that any of it has been sold—not to my knowledge. I know I went to a meeting the first year after I gave that land to the railroad company. The town was very much opposed to bonds. They had become prejudiced against the railroad. (Objected to.) I only speak of it. I was at that meeting, and they thought that was too much for a depot.

Q. Was there ever any project to make this the county-seat—this Manawa—at any time recently?

A. Ketchum spoke about that. He said they would do all they could—use their influence—to have it there. There was others used their influence in the same way.

Q. Do you say that you intended and supposed you were deeding this land to the company? Do you know to whom the deed actually ran?

A. I can't tell. I supposed it was to the company, and that is the idea I had of it. I might be mistaken about it; but I knew it was a railroad company, and these two gentlemen were officers employed to do the business, and I considered I was deeding it to the railroad company and these were its agents. Even if the deed was made to Ketchum I considered it was made to the company.

Q. Do you know whether it was made to Ketchum or not?

A. I don't. I considered them as acting for the company. I never thought of anything else. There was no person in that country but what called it railroad land. That was what I deeded it for to the railroad. I should not have deeded it to any individual at all. It was to assist the company.

Cross-examined by Judge ELLIS:

Q. How much of that land has been used by the railroad company since you conveyed it?

A. I don't know as there has been any but the right of way. I gave them the right of way before I gave them the land, I think. Mr. Ketchum knows about that.

Q. By a separate deed?

A. There was no deed at all for the right of way.

Q. You gave a deed after?

A. No, sir; I gave no deed to the right of way.

Q. Did you ever give any deed except the one you have stated?

A. I gave the deed for the 100 acres; that is all.

Q. How much did you say the railroad occupied of the land?

A. I don't know that they occupy any but what the depot stands on. That is a piece of land I deeded. I think it is on one of the forties of the eighty.

Q. How many acres?

A. I can't tell.

Q. Did they ever use or occupy any other part of the land?

A. I don't know. They cleared off on the other side perhaps two or three acres; cut down timber that was on it; cut it into cordwood.

Q. Right adjoining the track?

A. Yes, sir; it was a piece they had on the south side.

Q. How far from the track did the chopping extend?

A. Not far; not quite as far as their line. I join them on the south not far from the depot.

Q. You can give the distance more accurately than that?

A. I don't know exactly; it might be ten rods.

77 Q. There is no use made by the company except for cutting wood?

A. That is all I know anything about. I have not been there a great deal. I really don't know so much about the matters there.

Q. Was not the route through your land the best one for the road?

A. Yes, sir; it was.

Q. Was there not talk in regard to getting more bond aid from your town?

(Objected to by plaintiff.)

A. Yes, sir.

Q. What was the substance of that talk about bond aid?

(Objected to by plaintiff as incompetent, irrelevant, and immaterial.)

A. This was before I deeded this land that Mr. Ketchum was around. He was doing the business and trying to stir people up. They wanted $5,000 more; they had bonded themselves $10,000. I met Mr. Ketchum, I think, twice. I was opposed to it. I did not think the town was able to do it. He wanted me to electioneer, or try to stir the people up, and get them to bond more. He com-

plained they could not get the road along unless we would do something. But this bond business was before this other matter came up.

Q. I think you have said that Ketchum said the company was poor, among other things.

A. Not the town?

Q. The company?

A. Yes, sir.

Q. Was it in connection with that statement he talked about getting bond aid?

A. No; I will explain that.

Q. Do you say it was not?

A. I will explain it. In conversation the other evening I stated that Mr. Ketchum, when they were getting the bonds, always used the name of the company. He never used his name or Kelly's, as individuals, as wanting anything; that is the reason why I believed that I was deeding it to the company, they being officers of the company. Every company has to have its officers to do its business. It was on that ground I deeded it.

Q. That don't answer the question.

A. He used the company's name; they were poor, and could not put the road any further, unless they would bond another $5,000, and the town did.

Q. Then the talk about the bond aid was in the conversation where they said the company was poor and needed the aid? Did not he state that at the time?

A. Yes, sir; he said they could not get it any further. It would be stopped between Northport and London, and he threatened the company would take it across to Weyauwega.

Q. Did you know that Mr. Ketchum was acquiring lots of land for private use?

A. I know he bought twenty acres from Frank Hill and another piece of land; I was not certain about that; it appears that was private property.

Q. How many acres were there in that second piece?

A. One twenty; the other I don't know; perhaps not as much.

(Objected to.)

Q. Don't you remember he bought some more?

A. I don't know that he did.

Q. You know he bought those for his individual use?

A. Yes, sir; those two small lots was considered private property I know at the time.

78 Q. Didn't Mr. Ketchum tell you if you would give the land to Mr. Kelly that Kelly would be able to assist you to get the county-seat there, and so make the remainder of your land more valuable?

A. No, sir; he did not use the name at all. He said "we;" he did not say "I," or any other person, but he said "we," being the representative of the company.

Q. Did not he say Mr. Kelly was the man connected with the Fox

River Company, and that he was a man of influence, and could help you in getting the county-seat there?

A. I don't remember that he did.

Q. You do remember he said something to you about the county-seat?

A. Yes, sir; he said they would use their influence.

Q. He spoke to you about helping you get the county-seat?

A. Yes; certainly; he said they would use their influence.

Q. You also remember that was said as a matter that would enhance the value of your property?

A. He might have said that, but I don't remember anything about it.

Q. Don't you think it would make it more valuable?

A. Yes, sir; I think it would. It enhanced the value of property in other places.

Q. At that time was it not a fact that Mr. Kelly was a contractor of the company and not an officer—a contractor for the building of the road?

A. I never heard of his being a contractor until I heard the witness state so yesterday. I supposed he was the manager of the company; that was the business he done afterwards. I never knew he was contractor at all.

Q. Do you know he was not?

A. No; I don't know anything about that, only this office he was holding; he was the general manager, or something; I don't know what; he was one of the officers, and Ketchum was the president of the road.

Q. Was not it after the time you made your deed you found he was general manager?

A. I don't know when it took place. I supposed they were appointed by the company, the men doing the business; they seemed to be the most active men; I supposed they were part of the company.

Q. You don't remember when it was you found out he was manager?

A. When he got to running the road.

Q. That was long after you gave your deed?

A. Yes, sir; I don't know when that took place or anything about it.

(Signature waived.)

Deposition of Mary T. Thurston.

MARY T. THURSTON, called by plaintiff, being sworn, testified:

Q. Where do you live?

A. In the town of Thurston, Trempealeau county.

Q. What was your husband's name?

A. Ebenezer Thurston.

Q. You are a widow, are you?

A. Yes, sir.

Q. How long ago did your husband die?
A. The 13th of May last.
Q. Does the Green Bay & Minnesota railroad pass anywhere near your place that you and your husband used to own?
A. Yes, sir.
Q. Does it cross any of the land you used to own?
A. Yes, sir.
79 Q. Do you remember about when that road was built through there, about what year?
A. Six or seven years ago.
Q. About 1873 or 1874?
A. Yes, sir.
Q. Do you remember whether any of the parties who were getting that road through, or managing it, ever came to your husband and asked for any land for the road?
A. I don't know as to that; I know he gave some.
Q. Could you give a description of the land?
A. I don't think I could.
Q. N. W. ¼ of the S. E. ¼ of sec. 16, T. 21, R. 7. Does that sound like the right description?
A. I could not tell you the right description; we lived in T. 21, R. 7 west, I think.
Q. About how many acres were there in that piece that your husband gave the road?
A. Forty acres.
Q. Is there any depot on that land now?
A. Yes, sir.
Q. What is the name of the station, do you recollect?
A. Blair.
Q. How much money did your husband get for the land?
A. I don't know as he ever got anything; I don't remember as he did; if he has I have forgot.
Q. Did you sign the deed with him when the deed was made of the forty acres?
A. I expect I did; I generally did.
Q. Do you remember what gentleman it was that your husband had dealings with about this land?
A. I think it was Ketchum, Hiles, and some other one.
Q. Mr. Kelly, do you think?
A. It might have been; I could not tell; there were several around there at the time; I know that Mr. Ketchum was one.
Q. You don't remember quite so well about the others? Your impression is that Mr. Kelly and Mr. Hiles were there?
A. There was two or three; I don't remember, it is so long ago.
Q. Don't you remember anything that was given for the land at all? Did not the company give you anything?
A. They made propositions to build a depot there on the land.
Q. Was there anything else? Did they give you anything else?
A. They might have given something, but I can't remember.
Q. There was no money?
A. I don't remember that there was.

Q. Cannot you remember whether you ever had anything, you and your husband, from the company at all?

A. I can't, now.

Q. Did you ever have a pass on the road?

A. Yes, sir; we had a pass.

Q. They did give you a pass?

A. Both of us had a pass.

Q. They agreed, when you gave the land, and they did give you a pass?

A. Yes, sir; they did. Yes, sir; for life; we understood it, each of us.

(Objected to.)

Q. Was that agreement carried out? Did they give you a life pass?

A. No, it was not. I think it commenced some time in the summer and run along until about the first of January; then we should call for another and they ordered us another.

Q. They gave you a yearly pass and then a pass for another year, and so on?

A. Yes, sir; I don't know as we have had but two, as near as I can remember.

80 Q. Do you know how that deed was made—whether made to the railroad company or to some individuals?

A. I know it was made to the company, as they called it, as we supposed.

Q. They called it, and you supposed it was, a deed to the company?

A. Yes, sir.

Q. Was Ketchum or Kelly or Hiles present with you and your husband when the deed was signed? Do you remember that?

A. It seems to me Mr. Ketchum was at our house when the deed was signed.

Q. Did he say anything at that time about this land being for the company; do you remember?

A. I can't remember; we supposed it was for the benefit of the company.

Q. You did not mean to give any land to Mr. Ketchum individually?

A. Not to individuals.

Q. Do you know of any lots having been sold out of this forty acres since that time?

A. I don't know; there may be.

Q. Are there any buildings on it?

A. Not that I know of; there may be.

Q. Have not any new buildings been put up on that forty, since the depot?

A. I could not tell you. There is some that has been built there, but whether on that land or not—the depot stands quite near the line of the forty acres—I don't know exactly; I think there has been.

Cross-examined by Judge CATE:

Q. Where was the deed executed by you? Where was it you executed it?

A. At our house, I think.

Q. Do you remember whether you did or not?

A. I can't remember distinctly.

Q. Who was the officer that took the acknowledgment? Who came and asked if that was your free act and deed?

A. I could not tell.

Q. Did anybody?

A. I don't remember.

Q. Do you remember the fact of signing the deed—that you did sign it?

A. I think I did.

Q. Do you remember the circumstance of writing your name on the deed?

A. It was talked over in the house; I think I remember the deed—of signing it.

Q. You do remember?

A. Yes, sir.

Q. Did your husband sign it at the same time?

A. Both at the same time.

Q. Do you remember whether it was in the house or somewhere else?

A. I think it was in the house.

Q. How long was it after you first had the conversation with them you made the deed?

A. I could not tell; we were talking about it several times.

Q. Do you remember writing your name in the deed?

A. I think I do.

Q. Did you write your name? Are you in the habit of writing your name?

A. Always.

Q. Do you remember who was present in the house and signed the deed as witnesses?

81 A. I could not remember now; it is so long ago.

Q. Do you remember there was anybody there?

A. I think there was.

Q. Are you sure now that at the time the deed was signed Mr. Ketchum and other parties were present, except your husband?

A. I could not tell who they were.

Q. Do you remember they were there?

A. I think there was witnesses.

Q. But you don't know who they were?

A. I could not tell.

Q. How many times were they at your house before the deed was finally made out?

A. I could not tell that either.

Q. Were the negotiations had between Mr. Ketchum and your husband always in the house before you?

A. Oh, no; they were outdoors.
Q. The talk was outdoors?
A. Yes, sir.
A. At what time was it the agreement was stated before you?
A. I think in the summer.
Q. How long before the deed was executed was this agreement stated over?
A. I could not tell how long.
Q. How long do you think it was before the deed was executed?
A. They were talking some time about it.
Q. When was it with reference to the time the deed was executed that you heard this agreement or understanding you have spoken of?
A. I don't think I would want to state; I don't remember.
Q. Was it at the time the deed was signed by you—was it stated over at that time what the agreement was?
A. It is so long ago I can't remember; it has almost gone out of my mind what time it was.
Q. Can you remember whether the agreement was stated before you at the time the deed was signed, or was it some time before that?
A. I should not want to tell; I don't know.
Q. Was the deed read over when you signed it, was the deed read over to you and your husband when you put your names to it?
A. I expect it was.
Q. Do you remember whether it was or not?
A. I expect it was; it is the common way.
Q. Do you remember that this deed was read when you signed it?
A. It is a long time ago; it is something I am not familiar with; I have not had anything to refresh my memory about it; it is a new thing come up; I could not state.
Q. You are not able to state whether the deed was ever read to you or not?
A. I think it was read over to me in my hearing.
Q. That would be the same. Was it read to him in your hearing at the time you signed it?
A. I expect it was, if I did not read it myself; I expect he was satisfied.
Q. Is not it a fact the entire agreement, whatever it was, was made by Thurston and Ketchum and some other parties?
A. It was for the railroad company.
Q. That don't make any difference; whatever the agreement was it was made between some parties and Mr. Thurston.
A. It was with Mr. Thurston; between him and the other man; no other parties.
Q. Did Mr. Thurston tell you what the agreement was, or did you read it yourself?
82 A. I have told you what it was; I knew what it was.
Q. Did Mr. Thurston tell you what it was?
A. He didn't tell me; I heard it.
Q. Do you know which it was—whether you heard it or Mr. Thurston told you?
A. I could not tell for certain.

Q. If the deed was read you don't know whether it was read or not; you can't tell, of course, who read it?

A. I guess it was Mr. Ketchum if any one.

Q. Do you remember who did read it?

A. I can't remember distinctly.

Q. Do you remember any person coming to you with the deed, or being present with the deed, and asking you if you acknowledged that instrument to be your free act and deed?

A. I don't know whether the town clerk, John Debeau, was there or not.

Q. Do you remember any officer, town clerk, or justice of the peace, or anybody asking you if you acknowledged that to be your free act and deed?

A. I can't tell.

Q. You don't remember, then?

A. No, sir.

Q. Have you been in the habit of signing deeds very often in your lifetime?

A. I have, a few.

Q. How many — think?

A. I could not tell, in my lifetime.

Q. It was an occurrence that took place very often?

A. No, sir; not before.

Q. You don't mean you never signed a deed before; but don't you think if an officer had come to you and asked you if you acknowledged this instrument to be your free act and deed you would be likely to remember it?

A. Some things I might, but anything like that I shouldn't; I thought it was a man's business to talk about the railroad.

Q. If I understand you, you don't remember you ever acknowledged that deed at all?

A. I think I signed my name to it.

Q. I mean if some officer asked you if that was your signature and free act and deed; do you remember that?

A. I don't know as I can remember distinctly how it was.

Q. Do you remember whether anybody did take your acknowledgment to this particular deed?

A. No; but it kind of seems to me it was a justice.

Q. Are you willing to swear you ever signed that deed at all— that you ever wrote your name on that deed in the world?

A. I don't know as I could; I can tell my writing.

Q. I am asking you simply for your memory. Do you remember you signed that deed?

A. I don't want to say I did.

Q. Is it not a fact that Mr. Thurston was in the habit of signing your name to deeds?

A. No, sir; not to my knowledge.

Q. If he signed this deed it must have been without your knowledge?

A. I don't think he did.

Q. If he did it was without your knowledge?

A. I don't think he did; his eyes were poor; I often had to sign papers for him.

Q. You have signed deeds for him?

A. Yes, sir.

Q. Do you remember whether you signed this deed for him?

A. I think I did.

Q. You think you signed his name to this deed?

83 A. I think I did; that is what I think.

Q. And your own, too, at the same time?

A. I signed both together; it would be natural

Q. Was Mr. Ketchum present when you wrote that, or was it written some time when he was not present?

A. I don't know anything about that.

Q. When this deed was executed, you say you think you did write his name in it?

A. It kind of seems that I did; it is a man's business, as I stated before. I was not interested.

Q. Is it not true that Mr. Thurston brought this deed to you all filled out, and that you and he were alone in the house, and the deed was there executed, you signing both names, and then he took the deed away?

A. I don't remember whether we were there alone or not. I don't think we were.

Mr. LARNED. How old are you?

A. Seventy years old in June.

Q. How is your memory on general subjects? Is it pretty good or poor?

A. Circumstances alter cases. I can remember anything I am interested in. Anything like that—railroad men talking—about that I did not care so much.

Q. And you are not so confident of your memory?

A. No, sir; something else I might remember better. It is some time ago.

Q. Do you remember a gentleman by the name of Henry Lake?

A. Yes, sir.

(Objected to.)

Q. He used to live in the town? And Duke Porter?

A. Yes, sir.

Q. Do you remember they were there when you executed the deed?

A. No, sir; I can't remember.

Q. You don't remember they were there?

A. No, sir.

Deposition of Sally E. Monger.

SALLY E. MONGER, called by plaintiff, being duly sworn, testified:

My name is Sally E. Monger. I reside at Seymour, Outagamie county.

Q. You are not married?

A. I am not.

Q. How long have you lived in Seymour?

A. Twenty years.

Q. Did you have any property in the neighborhood of Seymour, or town of Seymour?

A. I did.

Q. Do you still own any?

A. I do.

Q. Do you remember whether you owned at one time about five acres of property in section 32, a little way west of the main road?

A. I did. Five acres, you say? Yes, sir, I did.

Q. Does the Green Bay & Minnesota railroad pass near that piece of property in section 32?

A. Yes, sir.

Q. Does it cross it?

A. It does not, I think. I don't know but it touches it—a corner. I would not be sure about that.

Q. When did you own that five acres?

A. In 1871.

Q. When did you part with it?

A. I can't tell when the deed was given, but I think it was in the fall of 1871, or in the winter of 1871–'2. I don't know exactly the time when the deed was given. It might not have been given until after that. The bargain was made before.

84 Q. To whom did you give the deed of the property?

A. The deed was, I supposed, to be given to Mr. Kelly as trustee for the railroad company. It was given to Mr. Kelly individually, I have found since.

Q. You don't know there was anything written in the deed about his being trustee?

A. I don't.

Q. What were the circumstances about this land—what made you make a deed of it?

A. I gave it to the Green Bay & Minnesota Railroad Co., what was then the Green Bay & Lake Pepin railroad; they were building it through to New London, and I think Mr. Ketchum——

Q. Where is New London?

A. West of Seymour, on the line west of Seymour. They said they had got it through to New London. I don't know as it was through any further, but they said it was through as far as there, They wanted to locate a depot, and I think Ketchum and Abrams, and I think Brandon—I would not say it was Brandon—came to me and wanted I should give some land for the benefit of the railroad, to have them locate a depot where Seymour now is, instead of locating it a mile west of there. I did not tell them at first whether I would or not, but finally Abrams staid with me through the night; he was in the habit of staying with us; said, after the other gentlemen were gone, that the company, like any other railroad company, was rather poor; they wanted to get all the help they could for to build the road further west, so they could finish the road.

Q. What was Abrams doing there? Had he anything to do with the road?

A. Yes, sir.

Q. Who approached you about the property?

A. He and Ketchum; they came up to see about the property, Ketchum and Abrams.

Q. Was Mr. Kelly there?

A. He was not; I don't recollect that I saw the gentleman.

Q. But you stated in the beginning you made your deed of this property to Mr. Kelly?

A. The deed was not made out until afterwards. We were talking it over at that time, and then afterwards they came around; I don't know who; I could not tell who came, only McIntosh, as he was doing my business in that way; he came to me and told me—there was some other gentleman with him, I don't remember who—he said—(Objected to, the declarations of McIntosh.) He came; there was no conversation with him, only that he came there with some of the railroad company, and McIntosh was doing my business; he said—(Same objection.) All I want to say is he made out the deed for me; that is all I want to say that McIntosh made out the deed; he read the deed to me, but I carelessly, and depending upon him, never minded who it was to, any further than I supposed it was to the railroad, to Mr. Kelly as trustee for the road.

Q. Did you get any money for the land?

A. I did not.

Q. What consideration did you get for it?

A. Not any.

Q. I suppose you did give it then because you did want the depot there?

A. I gave it to benefit the road. I knew the depot would
85 be there; that did not influence me at all. I thought the road would be a benefit to the country, and I gave it to benfit the road.

Q. There were five acres of this piece?

A. There were. There were five acres in that piece I gave to them. That is what I deeded to them; I deeded them five acres.

Q. What has been done with that five acres since?

A. I don't know what has been done, except that one village lot Mr. Kelly deeded to me. I exchanged and gave them a strip on the south side, and took a village lot in exchange for it.

Q. It was laid out in village lots?

A. Yes, sir; it was said to be laid out in village lots after I deeded it.

Q. How many people are there in Seymour?

A. About 1,000.

Q. It is quite a village?

A. It is a city.

Q. How much do you call land worth there?

A. I don't know the value of it now at all. Lots have been selling from $100 to $150; were at one time; I don't know what they are worth now.

Cross-examined by Judge ELLIS:

Q. You have stated that you supposed this deed was made to Mr. Kelly as trustee for the railroad company?

A. Yes, sir.

Q. Who told you he was trustee for the railroad company?

A. I don't know, only from the impression that I got as we were talking; I don't know that Kelly's name was mentioned until the deed was given. I gave the land to the railroad company. Mr. Kelly's name was not mentioned at all when I gave the land; it was not mentioned at all.

Q. Did you know the deed was made out to him?

A. Yes, sir; I knew his name was in the deed.

Q. Was the word "trustee" in the deed?

A. I don't know.

Q. You supposed the deed was made to him as trustee; you did not know the fact?

A. I don't think it was in there.

Q. You do know it was made to him individually?

A. I know his name was in there.

Q. All you know about his being trustee is what you supposed about it?

A. I gave the land to the railroad company.

Q. Your impression was he was trustee?

A. Yes, sir.

Q. Was it your impression at that time he was trustee, or have you learned it since you came to Milwaukee this time?

Q. I have not heard anything about it since I came to Milwaukee. At the time I gave the deed I supposed it was given to the railroad company, not to Mr. Kelly. I should not have given any land to Mr. Kelly.

Q. You supposed it was given to the company?

A. I supposed it was given to the company. I should not have given him any land.

Q. You would not have given him any land?

A. Not at all.

Q. You said you got a lot from Mr. Kelly afterwards?

A. Well, out of that same five acres I said he gave me a warranty deed signed by Kelly.

Q. Not signed by him as trustee for the company?

A. No, sir.

Q. What did you take it for if you supposed you deeded it to the company?

A. I took it, I supposed that Kelly was doing business for the company, and I supposed if he signed it it was all right.

86 Q. If he got it as trustee, he ought to have given it back to you as trustee?

A. That was my carelessness.

Q. You got the deed from him individually?

A. Yes, sir; I think so.

Q. Did you pay him for the lot?

A. I exchanged with the railroad company.
Q. You gave him another piece of land?
A. A strip of land on the south side of the five acres.
Q. What was the land worth you gave to him?
A. I don't know.
Q. You know something about it?
A. The village lot was worth about $25.
Q. To whom was that deed made—the deed you gave to him for the lot he gave to you? Did you give a deed directly to Mr. Kelly of that piece of land? I speak of the land you gave him for the lot.
A. I don't recollect making that. I don't recollect about that deed, but I suppose it was given in the same way. I can't say about that deed, whether made to the company or to him.
Q. Have you not heard since you came here that Mr. Kelly was trustee at that time?
A. No, sir.
Q. In conversation with the attorneys in this case?
A. No, sir; not about that.
Q. Have you had a conversation about your testimony in this case?
A. I asked what they wanted me to come out here for?
Q. You are sure you had no conversation on the subject of his being trustee?
A. Yes, sir; only what I have said myself about it. I have stated I supposed he was trustee, and I supposed he was at that time; that is what I supposed all the time, and always have since the road went through. I heard that he was one of the officers of the road.
Q. Do you know whether he was an officer of the road at that time?
A. No; only I saw the advertisement with his name to it.
Q. When did you see advertisements to the effect he was manager or trustee, or any officer of the company?
A. I have seen them different times for a number of years.
Q. Can you swear he was an officer of the company at the time you made this deed?
A. I can't swear to it, of course; I don't know.
Q. Can you say he was manager at that time?
A. I can't swear that he was.
Q. Or contractor?
A. I never heard until I came into the court-room that he was a contractor. I never heard he was a contractor on the road, or supposed he was, until I came here to-day.

Questions by Judge CATE:

Q. How long had the road been built at Seymour at the time you made this deed?
A. I can't tell the time, because——
Q. No, no; about how long had the road been built?
A. At the time I gave the deed—the deed was not given until after the talk—the railroad got through to Seymour, I think, in November of 1871, and it was that winter, the railroad was just

through, and it was about that time. I can't tell exactly when the time was, but it got through, I think, in November.

Q. Answer my questions as shortly as you can. There was a strife there as to where the depot should be located?

87 A. Yes, sir; there was talk.

Q. Was not this deed made in consideration or looking to the location of the depot at a particular place?

A. Yes, sir; the depot was to be located where the village of Seymour is. This land was given to the railroad, not to Mr. Kelly.

Q. Please answer my questions and not attempt to say something not responsive. You have testified what your understanding was. I want to ask you if this donation was not made solely with reference to the location of the depot?

A. It was.

Q. It was not given for the general use or benefit of the railroad company, but solely with regard to the location of the depot?

A. For the benefit of the railroad company if they would locate the depot there.

Q. You say it was given in consideration if the officers would locate the depot at a particular place?

A. Yes, sir.

Q. Was the depot located at that particular place?

A. Yes, sir; it was located there.

Q. A railroad had been built past there at the time you made the contract?

A. Yes, sir; the railroad was past there at the time the contract was made.

Q. Did anybody tell you if you would make this deed or give this land they would locate the depot at any particular place?

A. I can't say it was said directly.

Q. That is the way you understood it?

A. That was the talk.

Q. Did you make the deed after or before the depot had been located at that particular place?

A. I think the deed was made afterwards.

PLAINTIFF'S COUNSEL: You are of lawful age—over 21?

A. Yes, sir.

Examined by Judge ELLIS:

Q. Was this five-acre tract used by the company—occupied or used by the railroad company?

A. The railroad company, it was said—I can't swear to that; I don't speak of my own knowledge—has surveyed it out into village lots. They have a village plat, and it is called the railroad addition to Seymour.

Q. How do you know the railroad laid it out in village lots?

A. I can't swear they did do it. I was not there to see it. It was staked out. They said it was the railroad.

Q. Do you know who did it?

A. I know who did it, because I saw them doing it. I don't know who for.

Q. Was it not done by Mr. Kelly or some other individual?
A. I don't know. I don't know anything about their business, whether Mr. Kelly or somebody else was doing it.
Q. Did you expect it was going to be laid out in village lots when you sold it?
A. Yes, sir; I gave it to the company to do with as they pleased.
Q. You expected that would be done when you sold it?
A. I gave it to them to do as they pleased; yes, sir; if they needed it.
Q. You expected it would be laid out in lots?

(Objected to.)

A. Of course, if they wanted it.
Q. You did expect it was to be laid out in lots.
88 A. If they wanted it for that.
Q. You did expect they would do it?
A. I can't say so; we didn't expect any village there at that time.
Q. What did you expect would be done with that ground?

(Objected to.)

A. Anything they wanted. I gave it to the railroad for to use as they had a mind to. I did not give it for a village or anything else. I gave it to them for their use.
Q. You did state a moment ago they immediately laid it out in village lots?
A. Of course, there was something said about laying it out in village lots. Nothing at all at the time it was given. It was given to the railroad company for their use.
Q. Was anything said about the probability of a village being laid out there?

(Objected to.)

A. Yes, sir; as there always is where a railroad is coming through.
Q. That was your expectation?
A. I should not have laid it out in village lots if I had retained it.

(All these questions objected to by the plaintiff—what the witness's problematical expectations were.)

Q. You say now if you had kept it yourself you would have laid it out in village lots?
A. I said I should not have laid it out in village lots.

(Plaintiff moves to strike this testimony out.)

Q. Was it not one of your objects in making the conveyance that this ground would be laid out in town lots?
A. It was not. I don't think I thought of it. I don't think I thought of village lots at the time that was laid out or thought we were ever going to have a village there, or anything more than a village around the depot.
Q. It was laid out in village lots?
A. Afterwards, not at the time that was given.
Q. How long afterwards?

A. I don't know; I could not tell.

Q. About how long?

A. It was laid out—part of it was laid out—in the spring of 1872. That was on the main street; the village lots were laid out in 1872.

Q. I ask you whether any portion of that ground was used for depot grounds or tracks for the railroad—of this five-acre tract?

A. There is, I think, a track of the railroad across one corner of it.

Q. The main track of the road?

A. The track of the road.

Q. You think it crosses one corner?

A. Yes, sir; touches one corner. I am not positive about that, not attending to it myself, as the right of way was given across there. I had given the road the right of way over that land.

Q. Is not it a fact you gave land down to the track of the railroad? Was not it understood at that time that you conveyed the land it went down to the railroad, but not upon or across the railroad?

A. I had given the right of way to the railroad when it went through there. I had given that right of way when the railroad was surveyed through there.

Q. Then by this last conveyance you intended to give land extending to the railroad?

A. If taking the five acres by taking it back west would take it to it. I gave it commencing at such point extending so far
89 west and so far south, and then west again, enough to take in a tract that would make five acres, let it come where it would. The starting point had got to be at such a distance from the line of the section.

Q. Do you remember whether any of those boundary lines touched the railroad?

A. I don't recollect whether they did; if they did it was just at one corner.

Q. You don't really know whether it extended to the railroad track or not?

A. I don't.

Q. Was it your intention in this deed to include any of the right of way you had previously given?

A. It was not.

Q. Then you don't know that any portion of this five-acre tract was used in any manner by the railroad company for the purpose of their road?

A. Not for the purpose of their road. I don't know for the purposes of the road how any of it has been used since I deeded it away.

Q. Do you know the track does not touch it?

A. I don't know.

Q. Do you know it does?

A. I don't know that I have been on the ground. I don't know that I have been onto it since I deeded it.

Q. There are no buildings on it built by the railroad company for the railroad company?

A. There has a man taken a village lot on it; no buildings of the railroad company.

Q. No other improvements made by the railroad company?

A. Only to take off the wood and burn it up. I could not swear they did that.

Q. Do you know they did that?

A. I don't know they did. I know the wood was cut off. I did not ask whether they were cutting it off for the railroad company or not. They said it was for the railroad.

Q. What proportion of that five-acre tract had been laid out in town lots?

A. It is said the whole; I don't know.

Q. Do you know these town lots come up to the railroad?

A. I have a deed of a village lot on that property, so I suppose it is laid out in lots.

Q. Do the lots come up to the railroad track?

A. Nothing, except one corner lot.

Q. Do you know that does?

A. I don't know. I don't know whether the line comes to the railroad or not.

Q. You have seen stakes there?

A. I have not been onto it for seven years.

Q. How far do you live from it?

A. About ten rods, but I have not been there to know. I have not been there to see what the railroad is doing.

(Signature waived.)

Deposition of Minnie Hudson.

MINNIE HUDSON, called by the plaintiff, testified:

Q. Where do you live?

A. At Seymour.

Q. Same city as the last witness?

A. Yes, sir.

Q. What county is that in?

A. Outagamie.

90 Q. How long have you lived there?

A. About ten years.

Q. What was your name in 1871?

A. Robbins.

Q. You were at that time the wife of a Mr. Robbins?

A. Yes, sir.

Q. Did he, at that time, own some land in sec. 33, city of Seymour?

A. Yes, sir.

Q. How many acres in the piece?

A. Forty.

Q. Did you join with him in conveying that land away at any time?

A. Yes, sir.

Q. When was that?

A. I don't remember.

Q. It was about 1871, was not it?
A. It was when they were laying the railroad.
Q. How many acres did you convey to the railroad?
A. Eight.
Q. Does the railroad track cross the eight acres you conveyed?
A. Yes, sir.
Q. Is there a depot on it?
A. Yes, sir.
Q. How much money did you and Mr. Robbins get for that land?
A. Not any.
Q. Why did you give the land, then?
A. We thought the railroad would be a benefit to the place, and a benefit to us also.
Q. You owned other land also?
A. Yes, sir, we owned forty acres. This eight was a piece of the forty.
Q. Did you think the giving of the eight acres would benefit the rest of the property?
A. Yes, sir.
Q. That was the reason you deeded it?
A. And I thought the railroad itself would have been a benefit.
Q. It would not have been deeded except for the benefit coming from the railroad in some way?

(Objected to as leading.)

A. No, sir.
Q. Do you know whether the deed was made to the railroad company or to whom it was made?
A. I don't remember.
Q. You signed the deed?
A. Of course I did, if one was given, but I don't remember anything about a deed.
Q. What has been done with the land since it has been conveyed away?
A. A depot stands on it.
Q. You say you don't remember about a deed; do you remember the land was conveyed away?
A. I remember the contract.
Q. What was the contract?
A. I don't remember that, only that there was a contract.
Q. You remember there was a contract to convey the land to whom?
A. I don't remember; I supposed to the railroad company.
Q. Did you get any money for the land?
A. No, sir.
Q. Did you get a pass, or anything of that kind?
A. No, sir.
Q. Did you convey any other land, or give any other land to the road besides this eight acres?
A. No, sir.
Q. Did not you give the right of way?

A. This eight acres includes the right of way.

Q. That was all in one contract, was it, the right of way and the eight acres?

A. Yes, sir, if I remember right. It was all given at one time.

Q. Who was this contract made with? Who came to see you with reference to it?

A. Mr. Ketchum and Abrams and Randall.

91 Q. Did you know at that time what Mr. Ketchum's connection with the Green Bay road was?

A. Only that he was one of the company.

Q. Did you know anything about Mr. Abrams' connection with the road?

A. I supposed he was another one of the company; that is all.

Q. How long were they, about, negotiating for the purchase of the land or talking of the land? Did they come there several times?

A. Yes, sir; several times; I don't remember how often now.

Q. Did you hear any of the conversation between them and Mr. Robbins, or did you have any conversation with them yourself about it?

A. I had quite a good deal.

Q. State all that conversation with reference to the contract?

A. They told us what benefit it would be; they represented the company as being poor; it would help them and us also by giving it.

Q. They represented the company was poor, did they?

A. Yes, sir.

Q. Did they say anything more about the company's being poor, that they wanted to get any money, or anything of that kind?

A. They said nothing about money that I know of.

Q. Why did they say the company was poor? What had that to do with the contract?

A. I can't tell you.

Q. They only mentioned that in the conversation?

A. Yes, sir.

Q. And you wanted the road to go through, did you?

A. Yes, sir.

Q. Has the road benefited the rest of your land?

A. Yes, sir; it must have, greatly.

Q. You are over 21 years of age?

A. Yes, sir.

Cross-examined by Judge ELLIS:

Q. Are you sure the contract was made to the company and to the company alone?

A. I am not sure of any such thing.

Q. Are you sure there was but one contract?

A. There was only one that I remember.

Q. Don't you remember there was first a contract for the right of way and next a contract for five acres of the eight?

A. No, sir.

Q. That the land was conveyed in parts—three acres at one time and five at another?

A. It might have been; I don't remember; it was my opinion it was all given at once, in one contract.

Q. Don't you think now that three acres was intended to give the company the right of way, and perhaps depot grounds, and five acres was conveyed to Kelly or Ketchum for something else?

A. No, sir; neither would have had any land given them personally by us.

Q. Do you know to whom the contract was given?

A. No, sir.

Q. Whether it was to the railroad company or not?

A. It was intended for the railroad company.

Q. But you don't know whether it was or not?

A. I don't remember.

Q. Was there a deed after the contract was made, or only the contract?

A. I can't remember whether a deed was given.

Q. You signed the contract?

A. I don't remember whether I signed the contract.

Q. Do you know whether your husband signed the contract?

A. I suppose he did.

Q. It was signed, whether it went to the company or to the individual?

A. Of course, I supposed it was signed or they would not have taken it.

92 Q. It was signed, whether it went to the individual or to the company?

A. It must have been.

Q. You don't know which it was for?

A. I don't remember how it was written; I know what the intentions were.

Q. Do you know whether there was anything said at the time of making the contract, whether it was to be a deed to the company or Mr. Kelly?

A. I don't remember hearing Kelly's name mentioned myself; there was nothing said about that that I remember; I did not know at that time there was such a man in the world.

Q. For all you know to the contrary, that contract might have been made to Mr. Kelly?

A. It might have been, but if it was we were not told the truth about it, because I heard it read, but I did not read it myself; there was nothing about Kelly in it that I remember; if there had been I think I would have noticed it, because I knew it was meant for the company.

Q. Who applied for it—for the contract? Who brought it for you to sign?

A. I don't remember who made the contract out.

Q. Were you present when it was signed?

A. I don't remember of *the* signing it at all.

Q. Were all the conversations with your husband in regard to it?

A. No, sir; they would not have got any land from him alone; he would not give any; the gentlemen came into the house and talked to me about it; most of the conversation in regard to the land was with me.

Q. You managed the business yourself, then?

A. I did not manage, but by talking or over-persuading him.

Q. Your husband referred to you; he did not decide for himself?

A. He decided, of course, or they would not have got it; but he could not see at first it would benefit him, so he would not give it; when he saw it would benefit him then they got it.

Redirect examination:

Q. What has been done with this land since you ceased to own it?

A. The depot was built upon it, and the grounds are used for depot grounds, I believe.

Q. The whole eight acres used for that purpose?

A. I could not tell you.

Q. How large a part of it, do you think?

A. I don't know; I don't know the size of an acre by looking at it.

Q. Are there any other buildings on it besides the depot?

A. I don't think there are.

Questions by Judge ELLIS:

Q. Is not the right of way on the south side of the land?

A. Yes, sir.

Q. Near the south line?

A. I don't know how near; pretty near; I don't know how near.

Q. Near the south side?

A. I am pretty sure it is; it is on the south half of it; I don't know how near the line.

93 *Deposition of Frederic Muehl.*

FREDERIC MUEHL, called by the plaintiff, being sworn, testified:

Q. Where do you reside?

A. City of Seymour.

Q. How long have you lived there?

A. Thirteen years from last April.

Q. What do you do?

A. I am a farmer.

Q. Have you land there?

A. Yes, sir.

Q. Did you ever have five acres in section 33?

A. Yes, sir.

Q. Is that land opposite the station?

A. The depot? On the south side.

Q. How far is it from that land to the depot?

A. I don't know exactly how many rods.

Q. A little way?

A. It is a little way; I don't know exactly how many rods.
Q. Is it ten rods?
A. It must be about that—may be a little more—I don't know exactly.
Q. Did you convey or give this land to anybody?
A. To the railroad company.
Q. When was that?
A. I guess in 1871.
Q. What did you get for the land?
A. Nothing.
Q. Why did you then give the land, if you got nothing for it?
A. I know Abrams says it is a benefit for the road, and for the country, too.
Q. Abrams—you talked with him about it, did you?
A. Yes, sir.
Q. Had he anything to do with the road—was he connected with it?
A. I guess he was an officer; I don't know.
Q. Did he come to you and ask for the land?
A. Yes, sir; Abrams and a couple more—I don't know exactly who they were.
Q. Either of these gentlemen here?
A. I don't know exactly if Mr. Ketchum came or not.
Q. You are only sure that Abrams was there?
A. I am sure of him.
Q. Did you make a contract about giving the land; did you sign a paper?
A. No; not a contract.
Q. But you made a deed, did you?
A. Yes, sir.
Q. When did you make a deed?
A. I don't know exactly.
Q. Along in the year 1871, or after that?
A. I guess it was in 1871; I don't know for certain.
Q. Was the railroad built when you made the deed?
A. Yes, sir.
Q. Did you ever make more than one deed to the railroad company, or the parties to whom you made it?
A. As much as I know, I guess two.
Q. Two deeds?
A. Yes, sir.
Q. One for these five acres, and what was the other one for?
A. For the same five acres.
Q. Two deeds for the same five acres?
A. Yes, sir.
Q. Do you know why you made two deeds?
A. I don't know; that man—he was in the house—he said something was not right; I don't know what it was.
Q. Were the two deeds just alike?
A. I don't know exactly now; he read it; I can't remember now.

Q. Did you ever make any other deeds to the railroad company, or its officers, excepting about these five acres?

A. I guess not.

94 Q. Are you a married man?

A. Yes, sir.

Q. Did your wife sign the deeds with you?

A. Yes, sir.

Q. You say they were read over; who read them over?

A. I forget the name; who it was I can't remember.

Q. Do you know to whom the deeds were made?

A. I guess, as much as I know—I heard Kelly's name; I gave it to the railroad company.

Q. But you think the deeds were made to Mr. Kelly; you say you heard Kelly's name?

A. Yes, sir.

Q. Did you get any pass over the road?

A. No, sir.

Q. What has been done with the land since you sold it?

A. I guess a couple of acres is sold now from that five acres, as much as I know.

Q. Sold for what use, for what purpose?

A. What is the name of that company? Fort Atkinson Manufacturing Company.

Q. Have they built any buildings on it—a house or anything?

A. I guess there is nothing; I guess it is just for logs and lumber.

Cross-examined by Judge CATE:

Q. What time was this contract made, with reference to the time the track was laid along there—before or after the contract was made?

A. I guess it was after the contract was made, as much as I know.

Q. Is it right opposite the depot—this piece of land?

A. It is on the south side of the depot.

Q. Right opposite to it—right against it? (Counsel illustrates.)

A. On the south side; it is on the south side.

Q. Was it before or after the depot was located there?

A. I don't know exactly.

Q. You don't know whether it was before or after?

A. No, sir.

Q. Was the talk you had with Abrams before the depot was located there?

A. I guess it was before.

Q. Did Abrams tell you that if you gave this land he would locate the depot up there?

A. Not on that piece.

Q. He would locate the depot where it was located?

A. Yes, sir; he said so.

Q. Is that the reason why you gave it?

A. I thought I would give it——

Q. Is that the reason—his saying he would locate the depot—you owning land near by?

A. He said, The land is worth more if the track goes by it.
Q. You believed that?
A. Yes, sir.
Q. That is the reason you gave the deed to him?
A. I think it is good for the country.
Q. Yes, sir; the depot is good for the country. Did you think it would help you any?
A. I guess so.
Q. Is not the reason that you made it, that you thought it was good for the country, and good for your land?
A. I guess that was the reason.
Q. Was Mr. Abrams the man who brought the deed there to you?
A. I don't know exactly; I forget now.
Judge ELLIS: Was that land you conveyed used by the railroad company in any manner?
95 A. It was not.

(Signature waived.)

Deposition of Simeon W. Munger.

SIMEON W. MONGER, called by plaintiff, being sworn, testified:

Q. Where do you live?
A. I live in the city of Seymour. I have four sections—28, 29, 32, 33, town. 24, range 18, Outagamie county.
Q. What do you do?
A. Trade in grain, take care of the mails, &c.
Q. You are not a farmer?
A. No, sir.
Q. But you own a good deal of land around there?
A. Yes, sir.
Q. You are over twenty-one years of age?
A. Yes, sir.
Q. In the year 1871, or along about that time, did you own some land in sections 32 and 33?
A. Yes, sir.
Q. Did you ever give it or deed any of it away about that time?
A. Yes, sir.
Q. To whom?
A. I think I deeded some to the Green Bay & Lake Pepin Railroad Company, and some Kelly's name was mentioned in the deed.
Q. Please tell me where that land was that was deeded in Kelly's name?
A. I think on the south side of the track, the S. W. quarter of the N. E. ¼ of N. W. ¼ of section 33.
Q. How many acres were there in it?
A. I could not tell you; so much as laid south of the railroad track, be it more or less; probably about somewhere in the neighborhood of 20 rods, from 15 to 20 on the west end, and running to a point on the east end.
Q. Is it between Miss Monger's land and the road?

A. No, sir.

Q. Is the land you speak of east or west of the station?

A. East.

Q. How far?

A. The ground that the station stands on, I think, runs up to the section line, and the land between the forties of this land lies on the other side of the lane.

Q. Does the railroad run over this piece you gave to Mr. Kelly?

A. No, sir.

Q. Does it run near it?

A. Side of it.

Q. How much did you get for that land? Did you get anything for either piece?

—. No, sir.

Q. Did you get anything for either piece, either the one deeded to Mr. Kelly or the one deeded to the road?

A. I got a pass—in 1873, I think it was—for about half the year. That is all I ever have received. In the first contract—can I go on and explain? Abrams came along to get the right of way for the road.

Judge CATE: Which was the first contract?

WITNESS: I told him I would give him the right of way across the east 40. They run about 160 rods on my land, out and out. I would reserve the timber; and on the west 40, the west side of the line, there was a little corner cut off there. I told him for that 40,
96 the right of way across that 40, and that piece of land—they wanted that piece for the depot grounds—I wanted a pass for myself and wife while we lived. He said it was all right. That was the talk on the first start.

Q. You say you talked with Abrams?

A. Abrams was through getting the right of way for the road.

Q. Did you talk with anybody else?

A. I don't know as I ever made any bargain with anybody else.

Q. Did you talk with anybody else about this piece deeded to Kelly?

A. Yes, sir.

Q. What was said?

A. It ran along until—this piece was given with the calculation that the depot was to be on that three-cornered piece. When they were establishing the depot they wanted to put it over on another 40, and they were telling how much they would give around. Meuhl was to give 20 acres off the east part of his. I said, I have a three-cornered piece lies between that and the railroad; they may have that. That piece, I think, was given to Kelly, although I could not be positive about that.

Q. What was done with the land deeded to Kelly?

A. There is a little house on it, and some clearing has been done on it.

Q. A house belonging to some one that bought a piece of the land?

A. I could not say, only there is a house there and it is occupied.

Q. How many acres do you think there were on that piece you deeded to Kelly?

A. I could not say. I told you before it is 20 rods one end and runs to a point the other end. I could not tell without measuring how much there was.

Q. Is it as much as two acres?

A. I should think about that.

(Cross-examination waived.)

Recess until 12 m.

12 O'CLOCK M.

All parties present.

Stipulation.

It is stipulated between the respective counsel that all deeds or contracts upon which deeds are based may be introduced at any time prior to November 10th by either party, subject to right of objection at the time of the hearing of the case, or at any time prior thereto, without notice to either party.

Deposition of Thomas J. Burdick.

THOMAS J. BURDICK, called by plaintiff, being sworn, testified:

Q. Where do you live?

A. Black Creek, Outagamie county, Wisconsin.

Q. How long have you lived there?

A. Eleven years.

Q. What is your occupation?

A. Farmer.

Q. You are over 21 years of age?

A. Yes, sir.

Q. Have you owned land in Black Creek?

A. Yes, sir.

Q. Does the Green Bay and Minnesota railroad pass in the neighborhood of your land?

A. Yes, sir.

Q. Does it pass over any land you formerly owned?

A. Right through it.

Q. Did you ever convey any of that land to the Green Bay & Minnesota Railroad Company or any of its officers or agents; and, if so, when?

97 A. In the first commencement of the road I conveyed it to Mr Ketchum and George A. Randall.

Q. What was the description of that land?

A. The right of way was three and the depot grounds I gave was five—eight acres, section 9, town. 23. I don't remember what range.

Q. Does the present depot for the Black Creek station stand on that land?

A. Yes, sir.

Q. When you conveyed that land how much did you receive for it?

A. Nothing.

Q. Nothing at all?
A. No, sir.
Q. With whom did you make the contracts or agreements for the conveyance of that land?
A. With Mr. Ketchum.
Q. What was his position at that time with reference to the Green Bay road?
A. President, I believe.
Q. What year was this when you so conveyed it?
A. I think it is between seven and eight years ago.
Q. About 1873, then, or 1872?
A. Yes, sir.
Q. Was the road built across there when you conveyed it?
A. I think it was graded to lay in line.
Q. Was it completed?
A. I think not, clear through.
Q. When the contract was made—the original talk between you and Mr. Ketchum—was the road built then?
A. I think it was.
Q. Why did you convey the land to the railroad company or to Mr. Ketchum, its president, for no consideration?
A. I gave it to them to help the road along and get the depot on my own land.
Q. What did he say to you in inducing you to convey this land?
A. I don't know as there was anything in particular said; George A. Randall and me were together; George was chief engineer on the road; he bought a half interest in the forty; he said he would get the depot on the land.
Q. Did you own any other land?
A. Forty acres.
Q. Did you suppose that the location of the depot and track on this land you conveyed would benefit your other land?
A. Yes, sir.
Q. Was that, or was it not, a reason for your so conveying it?
A. It was my reason, and to help the railroad along as well as I could.
Q. Was the railroad in need of help at that time?
A. I should think so.
Q. What has been done with that land since?
A. The land I gave them? It is there just the same; there has nothing been done for railroad purposes.
Q. Is it used by the railroad in any way, excepting locating a depot?
A. It is used by the railroad company.
Q. How does the railroad company use it—any tracks on it?
A. The switch is on the right of way; there is no track on the five acres.
Q. Is the depot located on the three acres?
A. Yes, sir; nothing has been done with the five acres.
Q. Do you know to whom the deed was made?

A. To Mr. Ketchum, I think. George A. Randall brought out the deed himself; I put my signature to it. He is in town there. We were both of us in partnership.

Q. To whom did you intend to give the property?

98 A. To the railroad company.

Cross-examined by Judge CATE:

Q. What town do you live in?

A. Black Creek.

Q. What time did Randall buy an interest in this forty?

A. About the same year.

Q. Before or after the five acres was deeded?

A. Before Randall bought an interest.

Q. Did he own an interest in the five acres that were deeded?

A. He owned a half interest in the forty—an undivided half; that included the five acres that were subsequently conveyed. Randall owned the undivided half and I the undivided half; we were both of us owners of the forty.

Q. You deeded it in consideration of the location of the depot in any particular place?

A. On the five.

Q. That was the agreement—the depot was to be located there?

A. George told me so.

Q. Did you make the bargain, or George?

A. Both of us.

Q. What did George tell you that was the agreement for, if you knew it?

A. That we would have the depot there; we both of us would get the depot.

Q. Who made an agreement with the railroad company, or with Mr. Ketchum or anybody else, if you deeded that five acres the depot would be located there?

A. Both of us.

Q. Who with?

A. George and myself.

Q. You and George, together, made it?

A. Yes, sir.

Q. Did you make it with anybody else?

A. I don't know of anybody else.

Q. You and George agreed between you it should be deeded in consideration of a depot being located there?

A. We deeded it to Mr. Ketchum for the railroad company.

Q. Was anything said about Ketchum?

A. I don't know as there was.

Q. You said Ketchum for the railroad company?

A. He was president of the road.

Q. Was there any understanding between you and Randall it should be deeded to Ketchum?

A. I don't think it was directly to him.

Q. Do you know it is deeded to him?

A. Not for certain.

Q. Did you read the deed when it was written?
A. I don't know as I did.
Q. Can you swear it is deeded to Ketchum?
A. I can't remember.
Q. What are you here for, if not to testify to whom it was deeded? Do you know who it was deeded to?
A. It was deeded to the company; that is all I know.
Q. Do you remember how the deed read?
A. George brought the deed out and I signed it.
Q. Whom did you deed it to?
A. Mr. Ketchum.
Q. The deed says so?
A. I won't positively swear.
Q. Did you ever have any talk with Ketchum about it—about making this deed of this land?
A. I think we did once. Ketchum was there, George A. Randall, and, I think, Abrams.
99 Q. Was it then agreed it should be deeded to Ketchum?
A. Not directly to Ketchum.
Q. Indirectly to Ketchum?
A. I could not tell you.
Q. Is it not a fact that whatever arrangement was made, if any—made with Ketchum or anybody else on the part of the company—was made by Randall, and whatever you knew about it didn't you get it from Randall?
A. I got it from him and from the company.
Q. Who of the company?
A. Abrams and Ketchum; George A. Randall.
Q. What did Ketchum say to you about it?
A. He wanted the land.
Q. I mean about the conveyance of the land?
A. I don't know exactly.
Q. What did Abrams say to you about it?
A. He was there after the right of way.
Q. What did he say to you about these five acres—about the conveyance of it? What did anybody say to you about it except Randall?
A. We gave the land to the company.
Q. Who said anything to you except Randall himself?
A. I can't tell you; we gave the land to the company,
Q. Whom did you have any conversation with that led to the making of that deed except with Randall? If anybody, who was it?
A. I could not tell, it has been so long.
Q. I was trying to get at what was said, if anything.
A. I could not tell exactly.
Q. Is it not a fact that it was a matter that was arranged wholly between you and Randall for your own benefit, thinking if the depot were located there your own interests would be subserved by it?
A. We thought if the depot was placed there it would raise the value of our lands.

Q. Did you go on and plat a town there yourselves on your own land?

A. Yes, sir; Randall and myself platted it.

Q. Did not Randall say, if this land was deeded to Ketchem or Kelly, you would have their influence toward building up a town there and assist in making your own land valuable in this way?

(Objected to.)

Q. Did not Randall say that, as a reason why the donation should be made, *that* you would have the influence of Ketchum and Kelly towards building up a town there? Did not Randall say that as an inducement to you to give your share in the land? Did not Randall say so? Did not he say, "Now, if we make this deed together to these parties we will have their influence in making up this town?"

(Objected to as leading, by plaintiff.)

Q. I ask you now if Randall did not say to you, as an inducement to your making this deed, that by making it you would have the influence of Ketchum and Kelly and others towards building up a town on your own land and others?

A. I don't recollect any such thing.

Questions by Judge ELLIS:

Q. Were there two deeds made of that land—one for the right of way and the other for five acres?

A. I think there were; I could not tell you.

Q. You think there were two separate deeds?

A. I think so, but I do not know; it has been so long that
100 I have forgotten all about it; I have not thought anything of it since; I know we gave the land to the railroad company and that was the last of it.

Judge CATE: Do you remember who the three acres were given to?

A. The railroad company.

Q. You don't know who was designated in the deed as grantee?

A. I could not tell you.

(Signature waived.)

Deposition of William J. Abrams.

WILLIAM J. ABRAMS, called by plaintiff, being sworn, testified:

Q. Where do you live?

A. Green Bay.

Q. Are you connected with the Green Bay & Minnesota Railroad Co.?

A. As director; I am.

Q. How long have you been connected with that company?

A. Ever since it was organized, as director.

Q. Did you have anything to do with getting up the right of way in building the road?

A. Yes, sir.

Q. Did you have anything to do with getting up the right of way and land, if any there was, in the town of Seymour?

A. Yes, sir.

Q. Will you please tell us whether the Green Bay & Minnesota railroad has deeds for the right of way through the town of Seymour?

A. It has—some of it—has deeds for some of the right of way.

Q. Has the road at present the deed for the ground upon which the depot stands, in the town of Seymour?

A. I can't find any in the company's office; I know of none.

Q. Have you found any upon the records of the company?

A. No, sir.

Q. Have you any deed from Miss Sallie Monger?

A. I have a deed of the right of way.

Q. Have you any deed of the five-acre lot?

A. No, sir.

Q. From Meuhl, of Seymour, to the right of way; any such in the papers of the company?

A. I have not found any.

Q. Do you know of any being on record?

A. No, sir.

Q. Is there any deed from Mr. and Mrs. Robbins, of Seymour, of the right of way?

A. None in the hands of the company or any of the officers.

Q. And none on record that you know of?

A. No.

Q. Is there any deed from S. W. Monger of right of way of any land?

A. There is a deed of right of way.

Q. Is there but one deed from S. W. Monger?

A. That is all I know of.

Q. There is no deed of a piece of land located on the south of the track and containing about two acres?

A. Not in the company's custody.

Q. Is there any deed from Burdick, of Black Creek, to the company of the right of way or depot grounds?

A. No, sir.

Q. Or of any land in that town?

A. No, sir; there is a contract.

Q. What is that contract?

(Objected to; the contract is the best evidence; question waived.)

Q. Have you any deed—or has the company, rather, any deed—from Randall and Burdick, together, of right of way or depot grounds in Black Creek?

A. I don't find any.

101 Q. Or of any land?

A. No, sir.

Q. Have you found any on record?

A. No, sir.

Q. How is it in the town of Manawa? Has the railroad company deeds for its right of way through the town of Manawa?

A. Some part of it.

Q. How about the depot property?

A. I can't find any deed.

Q. There is some land there that has been testified to by one of the witnesses, Dr. Wood, 100 acres. Has the railroad company a deed for that 100 acres of land or part of it?

A. Not in the office.

Q. Have you ever seen any of record?

A. No, sir.

Q. In the town of Merrillan, as has been testified here by one witness, there is a tract of land, forty acres in extent, deeded presumably to the railroad company. Have you in your possession, as manager of the right of way, etc., for the company, any deed of that right of way for that company?

A. No, sir.

Q. Have you found any of record?

A. No, sir.

Q. Please state the condition of the company's title to right of way and depot grounds in the town of Whitehall.

A. I don't know much about that, only there are no deeds in the company's office for any right of way or depot grounds.

Q. Is there any deed from a man by the name of Wade for the right of way or depot grounds in Whitehall?

A. There is a deed I took myself; there is none for depot grounds or right of way in the village of Whitehall.

Q. What was your position with reference to the company at the time the company's road was being located through these towns?

A. Sort of general work.

Q. Had you any office in the company?

A. Not at that time, excepting director. I was paymaster.

Q. Did you go along looking up this right of way along the line of the road?

A. The first year of its survey I did; not afterwards.

Q. Did you ever meet Miss Sally Monger and talk with her about the right of way?

A. I have stayed at her house and talked with her about giving the right of way—a few acres.

Q. To the company?

A. Yes, sir.

Q. Were they in fact given to the company?

A. Yes, sir; the right-of-way deed I took myself at the time. She agreed to give so much. Mr. Ketchum thought we ought to have more.

Q. At that time who was with you in looking up this right of way along the road?

A. Most of the time I was alone.

Q. Was any one with you that you know of at Seymour?

A. Mr. Ketchum and myself were the ones.

Q. What position did Mr. Ketchum occupy on the road at that time?

A. I am under the impression he was acting president, but I would not be sure. About that time there was a change.

Q. Was he a member of the board of directors?

A. Yes, sir.

Q. And probably you think president?

A. I think he was at that time; I am not positive.

Q. What position did Mr. Kelly occupy on the road at that time?

A. Mr. Kelly was acting as general manager in the construction of the road.

Q. Was he a director at that time?

A. I don't think he was.

102 Q. Do you know when he became a director, if he ever did?

A. I think after the road was built to New London. I don't recollect distinctly.

Q. When was the road completed to New London?

A. I think in the winter of 1871.

Q. In the year 1873 was Kelly a director?

A. I think he was; I am not quite sure.

Q. How about the year 1872?

A. I think he became director at the election in 1872; I would not be positive.

Q. That election was in April. What position did Mr. Hiles hold in the road?

A. I don't know that he held any.

Q. Was he ever a director?

A. No, sir.

Q. No officer at all in the road?

A. Not that I know of.

Q. Was he connected with the construction of the road?

A. He had a contract of the grading.

Q. Alone, or was any one with him?

A. One alone and one in company with some one.

Q. Who was the company?

A. Dayton.

Q. How long was Kelly a director on the road?

A. Until, I think, the fall of 1877, from the time he was elected; I don't know exactly the time.

Q. Prior to the time he was director, I understand you say, he was general manager?

A. Yes, sir; in constructing the road.

Q. How long was Mr. Ketchum a director on the road?

A. I think from 1870; I would not be positive; up to 1877, I think.

Cross-examined by Judge ELLIS:

Q. He was acting as general manager in building the road? Do you know that before he took the contract he resigned as director or other officer of the company?

A. Yes, sir; he resigned. He was merely contractor when he took the contract.

Q. Was he not vice-president also?

A. I think not; I think Ketchum was vice-president.

Q. He resigned, then, whatever office he held in the company?

A. Yes, sir.

Q. Before taking the contracts at that time?

A. Yes, sir.

Q. For the purpose of taking the contract as a regular contractor?

A. Yes, sir.

Q. Is it not a fact that these particular conveyances you speak of were taken while he was contractor?

A. I don't know what particular conveyances you speak of.

Q. This you speak of in Seymour, for example.

A. The deed of the right of way I took of Miss Monger, I think, was taken while he was contractor and not director.

Q. Do you remember others made while he was contractor?

A. There may be several others.

Q. How many were taken while he was contractor?

A. I don't remember; Robbins was, I know, and Mongers; probably six or seven.

Q. Give the names of all you do remember.

103 A. I think he took one of Simeon Monger, one of Sally Monger, several at New London—I forget exactly how many.

Q. In places further on?

A. I did not go beyond New London.

Q. Is not this the fact in respect to all contracts from New London east?

A. I had nothing to do with the right of way beyond that.

Q. Was he not contractor when all these contracts between New London, Green Bay, and Fort Howard were made?

A. I don't recollect now; I have nearly all the contracts in my possession.

Q. Can you give any others given while he was contractor?

A. Jordan's; that is about all I can remember.

Q. How was it about Robbins' contract?

A. That I don't recollect; we were up there twice; I don't recollect whether he took Robbins' contract before he resigned or after; he did not take it at the time he did Miss Monger's.

Q. You don't remember whether the construction of the road was then progressing?

A. We were grading, I think, at the further end.

Q. That was under this contract?

A. The first four miles of the grade was not taken in his contract; I could not say whether Robbins' contract was taken after, he resigned and commenced work himself or before.

Q. Are you in the employ of the railroad company—the receiver?

A. Of the receiver at present; I am not constantly employed.

Q. How long have you been in the employ of the receiver from the time you were first employed?

A. I have been employed about a year—a little over—alternately; I only devote a certain portion of my time to his employment.

Q. Have you not an office in the offices of the railroad company or desk room there?

A. Yes, sir.

Q. That is where you do whatever business you have?

A. Not whatever business I have; what I do for the company.

Q. How long have you had your desk room with them?

A. About a year—a little over.

Q. Does not the greater portion of your income come from the receiver of the railroad company?

A. No, sir.

Q. Some portion of it does?

A. Some portion.

(These questions objected to by plaintiff.)

WITNESS: When I go and do a day's work for them they pay me for it.

Q. Do they have occasion for your services frequently?

A. They have most every month, more or less.

Q. Sometimes oftener?

A. No; I can prescribe my own time; I have so much of my own time.

Q. Your position is such you are ready to serve them on call?

A. No, sir, unless it is very imperative; generally I can arrange it.

Q. Generally you can?

—. ——.

Redirect examination:

Q. While Mr. Kelly was contractor building this road was he also manager of the road?

104 A. Yes, sir.

Cross-examined by Judge ELLIS:

Q. State what you mean by that.

A. He had full, entire control while he was contractor.

Q. How do you know that to be so?

A. Because I drew the articles of agreement; I have a copy of them.

Q. Did you draw the contract yourself?

A. It was dictated to me; it is in my handwriting; there are two copies; one I kept myself; I did not dictate it; it was dictated to me; it was brought to me in slips drawn up, and I made copies of them.

(Objected to.)

Q. Who dictated it?

A. Kelly and Morris dictated when I was copying some portions of it; if I said I drew the contract I did not mean that; I meant to say I copied it.

Q. You don't pretend to say that under that contract Mr. Kelly was to be the general manager of the road?

A. I did not say; I said Kelly was to have full control, and the company elected him as general manager; I don't think the contract said he was to be general manager.

Q. Are you sure the company elected him general manager?

A. I think it did; I would not be positive about that.

Q. Are you sure the company elected him general manager?

A. I could not tell positively; I am under that impression.

Q. If they did when was it?

A. While he had the contract.

Q. You don't know positively about that?

A. I don't want to state positively about that.

Adjourned to come together again on notice.

The whole testimony on the part of the plaintiff is concluded, except the rebutting testimony. The examiner will enter an order that the defendants may bring on the taking of their testimony at any time after September 15th upon ten days' notice by mail to the solicitors for the complainant, the order to provide that the testimony when commenced shall be continued from day to day until concluded, without due cause shown for discontinuance.

MILWAUKEE, *November* 10, 1880.

Parties appeared, as before, pursuant to agreement made between the parties at the time of taking the testimony heretofore.

Plaintiff now goes on to introduce documentary evidence referred to at that time.

The counsel for the defendants do not or fail to produce the deeds called for by the attorney for the plaintiff in pursuance of such arrangement, and we now give notice here of record, and demand the production of the original deeds.

Defendants do not produce them. Counsel for the plaintiff says: I call for the deed from Leander G. Merrill and Nancy, his wife; Benjamin H. Merrill and Catherine, his wife, to David M. Kelly. We offer a certified copy of that deed certified from the records by the register of deeds for the county of Jackson, Ex. "1," F. B.

We call for the deed of Sally E. Monger to David M. Kelly.

105 Defendants do not produce them.

Plaintiff's attorney offers certified copy from the records of said deed certified by the recorder of deeds of the county of Outagamie, State of Wisconsin, Ex. "2," F. B.

We make the same interrogatory in reference to the deed from S. W. Monger to David M. Kelly.

Same answer.

Plaintiff offers in evidence certified deed from S. W. Monger to David M. Kelly, certified by the register of deeds of Outagamie county, Ex. "3," F. B.

The same demand with reference to warranty deed from S. E. Monger to David M. Kelly.

Same answer.

Plaintiff offers certified copy — warranty deed from S. E. Monger to David M. Kelly, certified by the recorder of deeds of the county of Outagamie, marked Ex. No. "4," F. B.

Same request. Same answer with reference to warranty deed from H. Robbins and wife to David M. Kelly.

Plaintiff's counsel offers in evidence warranty deed from H. Robbins and wife to David M. Kelly, certified by the register of deeds of the county of Outagamie, Ex. "5," F. B.

Same question. Same answer with reference to warranty deed from Fred. H. Muehl to David M. Kelly.

Plaintiff offers a certified copy of warranty deed from Fred. Muehl to David M. Kelly, certified by the register of deeds of the county of Outagamie, marked Exhibit "6," F. B.

Same question. Same answer with reference to a second warranty deed from Fred. Muehl and wife to David M. Kelly.

Plaintiff offers certified copy of said warranty deed, certified by the register of deeds of the county of Outagamie, State of Wisconsin, Ex. "7," F. B.

Same question. Same answer with reference to warranty deed from Ebenezer Thurston and wife to Kelly, Ketchum, and Hiles.

We further make demand upon the attorneys for Ketchum and the attorneys for Hiles. Same answer as attorney for Kelly has previously made.

The plaintiff offers in evidence certified copy of a warranty deed from Ebenezer Thurston and wife to Kelly, Ketchum, and Hiles, certified by the register of deeds of Trempealeau county, State of Wisconsin, Ex. "8," F. B.

Same question. Same answer with reference to warranty deed from Marquis Wood and wife to David M. Kelly.

Plaintiff offers in evidence certified copy of warranty deed from Marquis Wood and wife to David M. Kelly, certified by the register of deeds of Waupaca county, State of Wisconsin, Ex. "9," F. B.

Same question. Same answer to warranty deed from J. A. Briggs and wife to Hiles and Ketchum.

Plaintiff offers certified copy of warranty deed from J. A. Briggs and wife to Hiles and Ketchum, certified by the register of deeds of Trempealeau county, State of Wisconsin, Ex. "10," F. B.

Same question. Same answer with reference to warranty deed from David W. Wade to Henry Ketchum.

106 Plaintiff offered in evidence certified copy — warranty deed from David W. Wade and Henry Ketchum, certified by the register of deeds of Trempealeau county, State of Wisconsin, Ex. "11," F. B.

Second deed from David W. Wade and wife to Henry Ketchum, the first deed being dated December 27th, 1873; the second, December 27th, 1873.

Same question. Same answer.

Plaintiff offers in evidence certified copy of warranty deed from David W. Wade and wife to Henry Ketchum, dated December 27th, 1873, certified by the register of deeds of Trempealeau county, Wisconsin, Ex. "12," F. B.

Same question. Same answer with reference to warranty deed from Isaac A. Briggs and wife to Hiles and Ketchum.

Complainants offer certified copy of warranty deed from Isaac A. Briggs and wife to Hiles and Ketchum, dated October 20th, 1875, certified by the register of deeds of Trempealeau county, Wisconsin, Ex. "13," F. B.

Same question. Same answer with reference to warranty deed from G. A. Randall and wife to D. M. Kelly.

Plantiff offers in evidence certified copy — warranty deed from G. A. Randall and wife to David M. Kelly, certified by the register of deeds of Outagamie county Wisconsin, Ex. "14," F. B.

Same question. Same answer with reference to warranty deed from Duke Porter to Kelly, Ketchum, and Hiles, dated August 22d, 1873.

Plaintiff offers in evidence certified copy of warranty deed from Duke Porter to Kelly, Ketchum, and Hiles, dated August 22d, 1873, duly certified by the register of deeds of Trempealeau county, Wisconsin, Ex. "15," F. B.

Same question. Same answer with reference to quitclaim deed from David M. Kelly to George Hiles.

Plaintiff offers certified copy of the same, certified by the register of deeds of Trempealeau county. Deed marked Ex. "16," F. B.

The complainant rests, with the exception of the introduction of two witnesses, J. R. Sechlar and Catherine Davy, and the documentary evidence to be introduced by them.

COUNSEL FOR DEFENDANTS: Will you now state what you expect to prove by those two witnesses?

COUNSEL FOR PLAINTIFF: I expect to prove by those two witnesses the conveyance of certain property described in deeds executed from them to D. M. Kelly, of the same nature as the other deeds which have been introduced here. The exact description of the property escapes my mind at this moment. I think, perhaps, I can give it.

DEFENDANTS' COUNSEL: You expect to prove by them the two conveyances?

PLAINTIFF'S COUNSEL: The conveyances by them to D. M. Kelly and the circumstances under which it was conveyed, being similar in character to the evidence of the other witnesses.

DEFENDANTS' COUNSEL: I suppose by that you mean you expect to prove by them that they conveyed it for the company?

PLAINTIFF'S COUNSEL: Yes; conveyed it for the company.

Defendants say they will go on with their testimony, saving the right to introduce rebutting testimony as to these two wit-
107 nesses just mentioned.

The counsel for the plaintiff say they will give defendant's counsel sufficient notice when witnesses will be introduced.

Deposition of D. M. Kelly.

D. M. KELLY sworn on behalf of the defendants.

Direct examination by Judge ELLIS:

Q. You are one of the defendants in this case, Mr. Kelly?

A. I am.

Q. You are acquainted with Henry Ketchum and George Hiles, the other defendants?

A. I am acquainted with those parties.

Q. Did you ever have contracts for the building of a railroad of the Green Bay & Lake Pepin Railway Company?

A. I had three different contracts with that company for building the road.

Q. Can you give the date of the first contract?

A. The 23d day of July, 1870, is the date of the first contract.

Q. When that contract was made were you an officer of the company?

A. I was not. I had been vice-president and a director in the company, both. I resigned both of those positions before making this contract.

Q. Previous to making the contract and becoming contractor you resigned—held no office when you became contractor?

A. I held no office at the time I made this contract with the company.

Q. How long did you remain a contractor without being an officer of the company?

A. Until April, 1874.

Q. During the time while you were contractor, what proportion of the right of way along the line of the road was donated to the road?

A. I have not the means of ascertaining definitely in that regard, but I should say that possibly a quarter of the right of way was donated. Other parts of it were purchased with money, and with contracts for ties, and for timber and cord-wood.

Q. Who purchased the parts to which you now refer with money?

A. The right of way matter was attended to chiefly by Henry Ketchum, the president of the company. I myself arranged for some portions of it, but Ketchum had that chiefly in charge.

Q. Who was president of the company in the year 1871, and until December, 1877?

A. Henry Ketchum was president of the company between those dates. He continued president of the company until December, 1877, when he resigned.

Q. Before going further will you give the dates of the other contracts? You said you had three.

A. The second contract was entered into on the 5th day of June, 1871, and the third contract on the 12th of February, 1872. Copies of those contracts have been attached to the answer herein.

Q. They are the copies referred to in the answer here?

A. They are the same.

Q. Three contracts made between yourself and the company?

A. Yes, sir.

Q. What duties did you perform under those contracts besides building the road?

A. I performed under those contracts the duties usually performed by the superintendent or general manager of the railroad, in addition to my duties as a contractor.

108 Q. You performed what duties you were required, then, by the contract?

A. I endeavored to perform the duties which I took upon myself under the contracts.

Q. Was the defendant, Mr. Hiles, ever a partner with you in any of the contracts for the construction of the railroad, or any part of the railroad?

A. Not in any manner or degree.

Q. Did you ever have any interest in any contract of Hiles for the construction of any portion of that road?

A. I never had the slightest interest.

Q. Did the defendant Hiles have, connected with you or with you and Ketchum or either of you, any care of the lands of the railroad company, except in the cases of Thurston and Porter?

A. Mr. Hiles had a contract for building a considerable portion of the road. It happened during the process of his grading that certain parties with whom a settlement had not been made with regard to the right of way objected to his entering upon their lands in grading the line of road through there, and in a few of those cases Mr. Hiles made a settlement of the right of way for the company. In no other cases, however, did he acquire lands for the railroad company.

Q. In what manner did Hiles and Ketchum and yourself proceed in acquiring lands on the line of that road? I see there is a statement in your answer here that Hiles and Ketchum—neither Hiles or Ketchum—either of them acted otherwise than is hereinafter set forth in obtaining property in that behalf, except as set forth in the complaint. Were no lands bought by Ketchum or Hiles along the line of that road in trust for the company?

A. There were not to my knowledge.

Q. Now you may state generally whether any lands, except lands necessary for the right of way or depot grounds, were purchased by yourself or by Hiles or Ketchum, to your knowledge, for the use of and benefit of the company along the line of that road?

A. Except such as were necessary for the rights of way.

Q. And depot grounds?

A. Did you say necessary?

Q. Necessary for rights of way and depot grounds?

A. Were any purchased?

Q. Yes; were any purchased for the use of the company, I mean?

A. I don't know that any such lands were purchased. I certainly purchased none, and I cannot say that Ketchum or Hiles did.

Q. Were there any purchased by yourself or Ketchum or Hiles which did constitute parts of the right of way and depot grounds

and which were paid for with your money or with the individual money of Hiles or Ketchum or either of them?

A. While the road was in process of construction Hiles and Ketchum and myself became jointly interested in certain lands, which were purchased with our own money, and on some of those lands stations have since been built, and near some of those lands and over some of those lands the track of the railroad has passed.

Q. How much of the land is occupied by the right of way? How wide, wherever the line crosses, and how much land is necessary for the use of the company for depot grounds?

A. Well——

Q. Generally?

A. At any intermediate station on that road three to five acres is ample.

109 (Objection by defendants' counsel, because it is made a question of conjecture as to what may be necessary for the company in the future.)

Q. How long have you been engaged in the railroad business? How long have you been a contractor for building railroads—interested as a contractor or otherwise?

A. About ten years.

Q. You may state again how much land is reasonably necessary for the use of the railroad at any station or depot grounds along the line of that road except at the termini of the road.

A. Something depends, of course, upon the shape of the land used for depot purposes, and also upon the amount of business done at a station; but there is no intermediate station on the Green Bay & Minnesota needing over five acres of ground to-day.

Q. Five acres?

A. And, in most cases, three acres are ample for all business purposes of the railroad.

Q. Now state whether or not any of the lands which you bought, or which Hiles and Ketchum bought, on the line of that road not embraced within the rights of way or depot grounds were necessary for the use of the road?

A. In my judgment they were not necessary, and would not now be necessary.

Q. Has the company ever used any of those lands, except lands covered by the right of way and which are within the depot grounds?

A. Not to my knowledge. I think not. Certainly not at the time I left the service of the company.

Q. How extensive is the largest or widest depot grounds in use by that company between Fort Howard and the Mississippi? Take the largest depot ground—how large is it?

A. Not to exceed five acres and a half.

Q. There is not one, then, to exceed five acres and a half?

A. No.

(Objection by defendants.)

Q. Do you remember a conveyance made by J. R. Sechlar, or any one of that name, to yourself?

No answer.

Q. Do you remember whether any land was ever conveyed to you by J. R. Sechlar in trust for the company?

A. The only case that I recollect where lands were conveyed to me in trust for the company was by J. R. Sechlar, in 1876. We agreed to put in a side track opposite a little place called Sechlarville.

Q. You may state where that is.

A. It is about two miles west—between one or two miles west—of Hixton. A regular station on the Green Bay and Minnesota railroad.

Q. Where did you say this land is? I did not hear you.

A. It is about one or two miles west of Hixton, on the line of the road. In 1876 Mr. Sechlar came to me and said he would like a side track put in opposite Sechlarville, and we finally agreed that if he would establish a freight building and give us a certain amount of land that we would put in the side track. At that time I was the vice-president and general manager of the road, and also a director, and the land was given by Sechlar for the benefit of the company.

Q. For the benefit of the company? What was it?

A. I took the deed running to D. M. Kelly, agent, for the reason that it was the company's land, really. I took the deed in that way for this reason: It occurred to me that we might make some
110 disposition of the tract of land which Sechlar donated, and we might realize some money out of it. If the land had been taken directly in the company's name it would have been subject to a mortgage, and when subject to a mortgage it would have been difficult to have sold the land.

Q. What mortgage do you refer to?

A. To the first and second mortgages of the Green Bay & Minnesota railroad.

Q. Mortgaged to the bondholders?

A. Mortgages under which the bonds were issued and sold; and, desiring to realize something for the company from the sale of this Sechlar land, instead of taking title in the railroad company directly I took it in the name of D. M. Kelly, agent, so that if I was able to realize anything from it for the company I might not have any trouble on account of the mortgage.

Q. That was intended for the company alone?

A. That I took in trust for the company.

Q. Never intended it for yourself at all?

A. I never intended it for myself, and had given it so little attention that I had forgotten all about it until yesterday. In examining my papers I came across this Sechlar deed, which I hold in my hand. The company has been using the property so far as the purpose of a side track and the building are concerned, and whether any further use has been made or not I do not know.

Q. How many acres are there?

A. I cannot tell. The property donated by Mr. Sechlar to me in trust for the company was the north half of the northwest quarter of the southeast quarter of section 19, town. 22.

Question by plaintiff's counsel: Will you be kind enough to read that again?

A. The north half of the northwest quarter of the southeast quarter of section 19, town. 22, range 5, and all that part of the southwest quarter of the northeast quarter of said section 19, town. 22, range 5, which lies south of the railroad track of the Green Bay & Minnesota railroad. That is the only piece of land which was purchased by me or given to me in trust for the railroad company, to the best of my recollection. I would like to add that no demand has ever been made upon me by the railroad company or the receiver on account of this piece of land held by me in trust.

Q. That is the Sechlar land you speak of?

A. The Sechlar land covered by this deed given to me as agent.

Q. In regard to the other lands—there are several tracts of land that have been deeded to you by name?

A. During the construction of the road lands were purchased by myself and others, the titles to which were taken in my name; and some lands were given to me while I was contractor, title to which was taken in my name.

Q. Were any of these lands paid for with money belonging to the railroad company or means belonging to the railroad company?

A. None of them.

Q. Whose means paid for them?

A. They were mine and Ketchum's or Hiles', who were interested with me; I don't remember the particular tracts now.

Q. Do you remember the particular tracts that were donated to you?

111 A. I recollect that there was some land at Seymour donated to me.

Q. Particular cases?

A. Half a dozen cases, I should think, at Seymour. There was land of Miss Sally Munger; also Frederick Muehl and wife; Henry Robbins also; H. W. Munger and wife also. Those, I think, were all the parties in Seymour.

Q. You stated that Robbins, Munger, and Meuhl——

A. Meuhl, Munger, and Robbins, S. W. Munger and H. Munger.

Q. You may take them separately and explain how they came to be donated to you.

A. They were received by me or—that is——

Q. Take up each case separately.

A. The contracts—well, they all rest on the same basis.

Q. Well, if one explanation covers them that is sufficient.

A. Contracts for those lands which were deeded to the parties named were made while the road was being constructed between Green Bay and New London under my first contract. It was understood that it was a very difficult matter to build the road, and I had taken a contract to construct it within a short time from Green Bay to the Mississippi river, a distance of about 215 miles. The officers

of the railroad company, as well as myself and the people along the line of the road, understood that it was a very difficult thing to build that road, and every one was anxious to contribute as much as possible to the success of my contract. The contracts for these lands in question were obtained by Henry Ketchum, president; W. J. Abrams, secretary, and George A. Randall, chief engineer, all officers of the railroad. I myself personally had nothing to do with obtaining the contracts.

Q. You are speaking now of these contracts in Seymour?

A. I speak now of these contracts, the names of the parties to which I have given, at Seymour. The contracts were taken in my name by the different officers of the company, and in 1876 and 1877 the parties giving those contracts gave warranty deeds also, running to myself personally. It was understood—it was arranged between the company and myself—that all lands which could be obtained which were not necessary for the right of way and depot grounds should be my personal property.

PLAINTIFF'S COUNSEL: Was that a written contract?

A. I don't think that was ever committed to writing, and the officers of the company were bound by the contract which existed between the company and myself to render me all the aid they possibly could under my contract; and in keeping with the contract—and in keeping with the understanding between myself and the company in regard to those matters—the officers of the company alluded to obtained these contracts for me as contractor in my name, and the parties giving these contracts several years later gave deeds running to myself.

Q. Who were the directors of the company?

A. At the time these contracts were obtained?

Q. Yes, sir.

A. Henry Ketchum, Anton Klaus, C. D. Robinson. I think, perhaps, Robinson had resigned before that. I will say C. D. Robinson was one. Joshua Whitney was another director, and Fred. S. Ellis. George Somers, another director.

Q. Have you named all the officers of the company? You have, have you not?

112 A. I have named Henry Ketchum, president; W. J. Abrams, secretary; George A. Randall, engineer.

Q. Who negotiated for the right of way at that time?

A. Ketchum was right-of-way agent of the company. He attended to that particularly.

Q. Did Ketchum know that you got those lands at Seymour?

A. Mr. Ketchum was aware of it, and, as I understood, assisted in getting some of those contracts.

Q. Did the officers of the company know that you obtained these donations in Seymour?

A. Yes, sir; they did.

Q. Contracts and deeds of land there?

A. They were aware of that fact.

PLAINTIFF'S COUNSEL: All of them?

DEFENDANTS' COUNSEL: From the beginning or afterwards?

A. At the time and ever since.

PLAINTIFF'S COUNSEL: Please make that a little more explicit, Judge.

DEFENDANTS' COUNSEL: Do you mean all the officers of the company, all to the directors? Let him answer that. He wishes to know whether all the officers of the company, directors and all, knew about this—all that occurred—or do you mean to say that those acting officers were the ones that knew? What is the fact?

A. There is no question but what the majority of the directors knew.

Q. No question but what the majority knew?

A. I believe all of them knew—all the officers and the directors.

Q. How did any officers of the company object to your acquiring those lands in the manner in which you did acquire them?

A. No one ever made any objection.

Q. Do you know whether or not they were satisfied with your acquiring them?

A. I have reason to believe that they were entirely satisfied with my administration and my course.

Q. They never found any fault with it, did they—to your getting the lands?

A. They found no fault, but passed several complimentary resolutions, which are part of the records of the company.

Q. Were other lands donated to you besides those at Seymour?

A. There were some lands at Manawa. I do not recollect any others.

Q. Now, why were those lands donated to you? What was the particular inducement which led to the donation from these individuals to you?

A. There were different reasons at different places.

Q. Take up the — at Seymour. The individuals from whom you received deeds or contracts.

A. At Seymour the representations were made that I was contractor of the company, and that I required liberal donations of lands to assist me in carrying out my contract. That was one. Then representations were made to some of the Seymour people that I would locate a town plat at Seymour with the lands donated to me, and it was represented to them that that would add to the value of their surrounding property. At Manawa the chief party donating any land was Dr. Wood.

Q. Give his first name.

A. Marquis Wood, a witness already examined on the part of the plaintiff in this case.

Q. Well, what was the inducement on his part?

113 A. The Doctor represented to me that he was exceedingly anxious to get the county-seat of his county established at Manawa, where he owned a large amount of property, and I told the Doctor I would assist him in getting the county-seat there, when the time came, in return for certain donations of land made by him to me. The Doctor was anxious also to have a town platted there.

Q. State whether that was understood at the time he proposed to convey to you?

A. My conversations with the Doctor were after he had made his contracts?

Q. After he had made his contracts?

A. The same representations were made to him before he made the contract conveying land by him. The Doctor wished also to have a town platted there at Manawa, and it was agreed that I would use my land which he should give me in that way and endeavor to establish a town there. At the time these lands were contracted to me by Marquis Wood—Dr. Marquis Wood—I purchased other lands at the same point. I then had a plan of starting a manufacturing business at Manawa in connection with these lands.

Q. What proportion of the land contracted to you at Manawa was necessary for the use of the railroad company?

A. The right of way and depot grounds were only necessary at Manawa for railway purposes.

Q. All the rest was unnecessary?

A. Yes, sir; three acres was ample for depot grounds at Manawa.

Q. With respect to those lands constituting a part of the right of way and depot grounds, what has been the intents and purposes, so far as the company is concerned, that they should be conveyed to the company or not?

A. Wherever I purchased any lands through the line the road ran, or on which it was for the interest of the company to have stations established, I intended from the first to give such right of way and suitable station grounds to the railroad company.

(The part of the answer which states intentions is objected to.)

A. I did not consider myself under obligations to do that, but that was my intention, nevertheless.

Q. Well, now, do you speak of lands donated to you solely or of all lands, whether donated to you or bought by you and paid for by you?

A. I speak of all lands in which I had an interest along the line of the road.

Q. Well, now, in respect to those you had bought and paid for out of your own money, did you intend to convey them to the company without being repaid the money you had disbursed for them, or did you, nevertheless?

A. I intended to give them.

(Answer stating witness' intentions objected to.)

Q. Have you offered to convey those lands to the company—the land embraced in the right of way and depot grounds?

A. I have.

Q. Will you state the circumstances under which the offer was made, and what was said and done about it?

A. I resigned my position as general manager and vice-president of the road in November, 1877, and requested the parties holding the majority of the bonds and stock residing in New York to send

out my successor on or before the first day of January following. Mr. Timothy Case came out from the East, and I turned over the charge of the road to him on December the 28th.

Q. 1877?

A. 1877. I was obliged to go to Madison to attend to my duties in the Legislature early in the following month of January. I said to Mr. Case, after he took charge of my place, that I had made a great many transactions and a great deal of money had passed through my hands during the construction of the road; that I had not time to post him regarding all details, but if there was anything which he did not understand, or which did not look right to him, if he would give me due notice I should be glad to post him and explain to him fully in every particular. I went to Madison, and from that time to the present, with one exception, nothing has been said to me in regard to rights of way and depot grounds or lands—any lands held in my name up to the present time by any officer of the railroad or by the receiver. I have held myself in readiness at all times to answer all questions and to make any desired explanations, but, with the one exception alluded to, no questions have ever been asked me in that regard, and no demands have ever been made upon me in that regard.

Q. Demand for——

A. Demand on account of those lands, I mean.

Q. To convey the land to the company? Never was asked to convey the lands to the company?

A. No; I have never been asked to convey to the company or to turn over to the company anything. The exception referred to was this. I wish you would let me see the copy of that notice we served on them.

(Defendants' counsel hands letter to witness.)

WITNESS: In the summer of 1879——

(Question by defendants' counsel to plaintiff's counsel): Will you produce that letter?

DEFENDANTS' COUNSEL: We have not it, either here or elsewhere.

WITNESS: In the summer of 1878 Timothy Case, receiver, sent a message to me at my office in Green Bay that he would like to have a conversation with me on that day in regard to some railroad matters. I returned answer that I would be in my office at a certain hour the same day. At the hour named Timothy Case and his son, Theodore, came into my office. Timothy Case opened the conversation by stating that they had been looking over the records of the company, and had discovered that I owned a large portion of the right of way occupied by the road. I replied that that was not the fact, but that at several points where stations had been established and where I owned real estate I did also own the right of way. Mr. Case answered that that was so, and that was what was meant, and then desired to know what I would ask for a title to such rights of way and to such grounds occupied for stations. I said that I was surety in a number of cases where bonds had been given by the railroad com-

pany to prosecute appeals; that I was also a nominal defendant in a suit in the New York courts, where I was called upon to pay something over $90,000.

Q. Will you give the title of that case?

A. That is the suit of Garsia against myself.

Q. State whether or not the other cases are the cases referred to in your answer?

A. That and the other cases are the cases referred to in my
115 answer. I also said that I thought when the rights of way and depot grounds were considered the question of my liability under those suits should also be considered, and I asked Mr. Case if he was authorized to treat with me regarding those suits. He said he was not. I then said I thought we had better defer any further talk regarding the right of way and depot grounds until he was authorized to treat with me regarding those suits. Mr. Case then said that he thought that perhaps that was fair, and he would like me to inform him what I wanted regarding those suits and my liability under them. I told him I wanted a bond of indemnity to protect and to save me harmless from any liability on account of those suits, signed by responsible parties. Mr. Case then asked me what I would do regarding the rights of way and depot grounds if he would furnish me such a bond, and I replied that if he would furnish me such a bond I would give a quitclaim deed, free of all expense to the railroad company, of the rights of way and depot grounds which I owned, and to which the company had no title. Mr. Case replied that he thought that that was very fair, and that he would consider the giving of such a bond as I desired. Theodore Case then joined in the conversation and said this: "Mr. Kelly, I wish you would furnish us with a list of those suits, and also with a list of the lands owned by you along the line of the railroad. I replied that I should not do that, because I owned a good deal of land along the line of the railroad which I did not purpose to give or sell to the railroad; but, so far as the rights of way and depot grounds were concerned, I was willing to have those taken into consideration. I was willing they should have a list of those. Well, Timothy Case then said that was all they cared about—was the rights of way and depot grounds, and asked me to furnish him with a list of those suits to which reference has been made. That was the close of the interview, and Mr. Case and son then left my office. After consultation with my attorneys, and obtaining from them a list of these various suits, I addressed a letter to Timothy Case, receiver, on the 22nd day of November, 1878, a copy of which letter I have now in my hand.

PLAINTIFF'S COUNSEL: Please let me see the letter before reading it.

WITNESS: It is taken from the copy-book, and that letter is a copy of the letter which we have called for and which we have not received.

(Objected to.)

(Witness reads letter):

"GREEN BAY, *November* 22*d*, 1878.

"Timothy Case, Esq., receiver G. B. & M. R. R. Co.:

"SIR: Referring to a conversation had with you a number of months ago, and to the request then made by you to me, I now have to state that the railroad suits in which I and friends of mine are held as sureties are, so far as I am present advised, as follows: Sarah McEvoy against The Green Bay & Minnesota Railroad Company—two cases; Isaac R. Carver *vs.* The Green Bay & Minnesota Railroad Company; Anna Riggs *vs.* The Green Bay & Minnesota Railroad Company; also in the matter of unpaid costs in New London Striker suits; also there is a suit in New York city courts—Garsia *vs.* Myself, in which the railroad company is the real party in interest. In this case the damages are laid at $90,000, but without doubt it could be settled for not to exceed $5,000; and a short time
116 before I left the service of the company I could have settled it for $500; but not wishing to be blackmailed I refused to pay it up. The enclosed letter, just received, will show what the able attorney in New York who has been retained thinks of the chances of the plaintiff to recover in the action. Please return the said letter to me. If, then, the Green Bay & Minnesota Railroad Company will give me ample bond to hold me harmless from the foregoing described suits, I will make, execute, and deliver to it a deed, free from expense, of all right of way and of all depot grounds now being used by it, which is the property of myself, and the title to which is in my name.

"Yours, &c., D. M. KELLY."

Q. You have not the letter which was enclosed, have you?

A. That letter has never been returned to me by Mr. Case, to the best of my knowledge and recollection. I never received any reply to that letter enclosing the letter to Mr. Case, but I never received it back, to the best of my knowledge and belief—the letter of which a copy has been read. I never received a reply, either verbally or in writing, and in the course of a few months after, this suit was brought. With, then, this exception, which I have been describing at length, no demand has ever been made of me in any way, shape, or manner for title to any lands which it was alleged I held in trust, or for any right of way, or for any station ground.

Q. Did the receiver, or any one for the company, ever offer to indemnify you against your liability in those cases in which you were surety?

A. No.

Q. As far as you know, you are still liable in those cases?

A. My impression is that some of the suits in these cases have been settled since. I think I am still liable under some of them.

Q. What proportion of them have been settled, so far as you know?

A. I think, without knowing—I simply think that one-half of them have been settled, probably.

Q. About half of them have been settled?

A. That don't include the Garsia suit, however?

Q. Has the receiver, or any one of the company, ever offered to assist you in your defense of the Garsia suit in New York?

A. Never.

Q. What was that suit brought for?

A. The railroad at one time gave me a power of attorney to negotiate bonds with power of substitution. I substituted the plaintiff, Garsia, and he went abroad. While abroad I informed him by telegraph that I had sold—I think it was $600,000 or $1,200,000 of the bonds in New York, and not to make any contract until he received some word from me by letter. I wrote him immediately to the same effect. He returned to New York and claimed that before he received my letter, and not understanding my telegram, he had sold bonds, and that the loss to him in commissions was something in the vicinity of $90,000. That, in general terms, is the substance of that case.

Q. Sued you for $90,000?

A. He sued me to recover $90,000 which he claims he has lost.

Q. What is that business; your individual business or the business of the company?

A. It was unquestionably the company's business and taken under power of attorney granted by the company.

117 Q. Did the officers of the company know that this suit had been commenced here?

A. They did.

Q. How long has the case been pending?

A. I should say five years. I think it was commenced in 1875. It might possibly have been in 1873.

Q. Did you ever speak with the officers of the company in reference to or ever talk this suit up with the different officers of the company?

A. I have talked this suit up with the officers of the company, more particularly with the president than any one else.

Q. What efforts have they made to assist you in that suit, if any?

A. I am not aware that they have made any effort.

Q. Is this suit still pending and undetermined?

A. Still undetermined.

Q. You remember a conveyance of land by Ebenezer Thurston and wife to any one—lands owned by them, embracing the right of way and depot grounds, or any lands?

A. I know there was a conveyance by Thurston and wife to Ketchum, Hiles, and myself, I think, but personally I had nothing to do with the negotiation—with the arrangement. I don't think I ever had any conversation with Mr. Thurston or Mrs. Thurston, either before or after.

Q. Have you any knowledge on the subject?

A. I have no personal knowledge except what I have heard through other parties.

Q. Were those lands in the town of Preston?

A. Those lands are located in the town of Preston; yes, sir.

Q. Do you know whether that town had donated any aid to the company in bonds?

A. My impression is that the town did vote some aid.

Q. How much?

A. I don't know now.

Q. Could you tell if the amount was stated to you?

A. I think it is $15,000.

COUNSEL FOR PLAINTIFF: Yes; more than $25,000.

Q. Have you any recollection now of the amount?

A. I recollect that after that contract was made by Mr. Thurston that Mr. Ketchum and myself established a lumber yard in that town of Preston, and undertook to build up a town there, and spent some money there.

Q. Do you know what was the inducement held out to them for the conveyance of the land by them?

A. I can only state that as having had it through others.

Q. Have you any knowledge respecting lands purchased from the State of Wisconsin by Ketchum, or Ketchum and yourself?

A. I know that I furnished Ketchum some money to purchase some land. I bought some myself directly.

Q. Do you know what township and range those lands were in?

A. I could not state from memory. I have never charged my memory with them.

Q. Referring to the answer I find the lands described in this way: Situated in sections 10, 15, 28, 29, in t'p 21, R. 9.

A. I think we purchased those lands of the State—some of those lands that I furnished money for, the last in particular.

Q. For whose benefit were those lands purchased?

A. All lands purchased from the State which I had an in-
118 terest in were purchased for myself and those interested with me. No portion was purchased for the railroad company.

Q. With whose money or means were those lands bought?

A. With the private means of Hiles, Ketchum, and myself.

Q. Were they bought before or after the location of the road over or through them?

A. Afterwards, I think.

Q. Well, how can you remember how that was—whether bought before or after?

A. My memory is not good on that point, because I never charged my mind with it.

Q. You don't remember, then, whether they were purchased before or after the location of the road?

A. I could not; I only remember in regard to those lands that I furnished some money.

Q. Were any of those lands bought for the use of the railroad company?

A. None of them, unless the right of way passes over some of them, but whether it does so pass I am not informed.

Q. Is there any depot grounds there?

A. No depot grounds.

Q. Then the railroad company only had the use of such a portion as was covered by the right of way?

A. It uses some of them for the right of way.

Q. Then, is any other portion of those lands used by the company in any manner?

A. None at all.

Q. Have you any recollection of lands bought of J. A. Briggs and wife, said to be in sec. 32, T. 31, R. 9, eight several contracts?

A. I know that there was land bought of Briggs and wife, in which I had an interest.

Q. Were those lands obtained for the company?

A. They were not.

Q. Or were they necessary for the company?

A. They were not necessary.

Q. For their use?

A. For the company's use.

Q. What was the consideration paid for the land—to whom did the consideration belong—the price or money?

A. The consideration was paid to Briggs; I think it was $500.

Q. Who paid it?

A. Mr. Ketchum paid it.

Q. Whose money was it?

A. Mr. Ketchum's I presume.

Q. Did the company furnish any portion of the price, or own any of the money that was paid for it?

A. Not a dollar.

Q. Has any of it been used by the railroad company?

A. I think not, unless the right of way passes over a portion of it?

Q. For whose benefit was the land purchased from J. A. Briggs and wife—for whose use and benefit?

A. It was purchased for private use; use of Henry Ketchum, George Hiles, and myself.

Q. Has there been any claim on the part of the company at any time that the company ought to have these lands I am now speaking of—these lands which were conveyed to you or Hiles or Ketchum—outside — lands covered by the right of way or depot grounds?

A. Never been any such claim as that made.

Q. Has there been any claim at any time made except by this suit in any manner whatever?

A. None whatever with the exception of the conversation
119 which I have detailed between Timothy Case and myself, which was succeeded by a letter, a copy of which I have read.

Q. No claim was made, then, before Mr. Case was appointed receiver?

A. None whatever.

Q. Was there no complaint that you held land that ought to belong to the company?

A. None whatever that I am aware of.

Q. Did or did not the officers of the company have knowledge of all those transactions while they occurred?

A. No effort was made to conceal them in the slightest degree. They were a matter of open effort and result, and were a matter of common property.

Q. Don't you think the officers of the company knew that the lands were bought by yourself and Ketchum and Hiles—all those lands?

A. It was a matter which was known all along the line of the railroad. I could not swear that they all knew it.

Q. Did Mr. Ketchum know it?

A. He knew it perfectly well.

Q. Did Abrams know it.

A. Mr. Abrams, I think, knew it. He knew about the Seymour matter, and I presume knew of the balance.

Q. The directors of the company—did they know it or not?

A. I should say they did.

Q. Was not all the business done in broad daylight, so to speak?

A. No effort was made to conceal anything, in the slightest degree; no thought of it.

Q. Was there any intention on your part to secretly take advantage of the company?

A. None whatever.

Objected to.

Q. Was there any attempt or design on your part to defraud the company or take advantage of it in any way whatever?

A. None whatever.

Objected to.

Q. In respect to those lands, when the purchase was made you were one of the parties interested in the purchase, were you not?

A. I was one of the parties interested.

Q. Do you know whether the contract was taken in the name of the three or not?

A. I think it was.

Q. And when the deeds come to be executed had you not part in them?

A. My impression is that when the deed was executed, or before it was executed, I had sold out my interest to George Hiles.

Q. And a deed was made?

A. The deed was made to Hiles and Ketchum, leaving me out.

Q. I understood you to say, I think, before, that the lands were donated to you at Seymour—were first contracted to be conveyed to you and afterwards conveyed in pursuance of the contract.

A. And several years after the contracts.

Q. But when the original purchase or donation was made you were contractor, were you not?

A. I was a contractor at the time the contracts were ob-
120 tained, but as a matter of fact the deeds were not executed under those contracts until 1876 or 1877.

Q. When you got them by contracts you were not an officer of the company?

A. I was not an officer of the company at the time. It was under my first contract, or while I had the first contract, that those lands were contracted to me.

Q. Does that apply to all lands bought at Seymour?

A. All lands at Seymour.

Q. The answer refers to block 13, blocks 43, 45, 46, in town of Seymour, and five acres of land—another contract? These are included, are they?

A. I think those are the lands that were donated to me at the time.

Q. Do you still hold those lands donated to you at Seymour?

A. I think I have contracted one lot at Seymour.

Q. Well, you claim them and hold them?

A. I still hold them on my title.

Q. Claim them as yours now?

A. I do.

Q. You say except one lot?

A. I gave a contract for one lot to a party there whose name is in the answer. I think I received $25 on account of the contract. I think that was the only contract of lots at Seymour that I ever made.

Q. You remember the property at the village of Manawa? Yes; you have explained that already, I think.

A. That is the Dr. Wood property, Judge. I have testified in regard to that.

Q. Did you sell any one or more of those lots at Manawa in 1876?

A. I tell you I have sold two or three of those Manawa lots, or contracted them. The answer says lots 1 and 8, in block 12, for $85.

Q. You recollect that?

A. Yes, that was the fact.

Q. The residue remaining unpaid.

A. The residue remains unpaid.

Q. With respect to the northwest quarter of the northeast quarter, on which there is a town plat, state whether or not that was donated to you personally.

A. Where is that located, Judge?

COUNSEL: It seems to be referred to as a part of those lands at Manawa. It is in that same paragraph. I am not familiar enough with the situation.

A. I think that the town plat of Manawa is located partly on the Dr. Wood lands which were donated to me and in part on lands which were purchased—certainly a portion of the town plat in the Dr. Wood land.

Q. State whether any of that land was donated to you.

A. The Dr. Wood land was donated to me, of which I have testified, and if the town plat is located on Dr. Wood's land, of course——

Q. Do you remember about what time in October, in 1872, the plat was made or the land donated to you?

A. That was the time, in 1872.

Q. Were you contractor at that time?

A. I was.

Q. Officer of the company?

A. I was not.

Q. What was the particular inducement for the donation?

121 A. Judge, I have gone over that; that is the Dr. Wood case, who wanted the county-seat and the town established.

Q. I find that it is also stated here in the answer itself. I have undertaken to examine you from the answer; that not being a case of mine, I, of course, have to find out what there is in the answer. Another contract described in it is the S. W. ¼ of the N. W. ¼ of T. 23, R. 4, excepting certain portions thereof, which were excepted, and this is the only description that is given in the answer here by which I can remind you of it.

A. I think that is the L. G. Merrill property, Judge.

Q. What was the consideration for that deed?

A. Well, if that is the L. G. Merrill property, it was obtained this way——

Q. Well, now, state how that property was obtained—all the circumstances and facts respecting it.

A. L. G. Merrill, at the time we commenced the construction of the road, was living at Merrillon, on the line of the West Wisconsin railway, 150 miles from Green Bay. Mr. Merrill had several interviews with me in regard to the construction of our road through his property at Merrillon. I represented to him, in company with Mr. Ketchum, who was active and efficient in getting up local aid for the company, that the road was in need of assistance, and that while it might be for the interests of the company to construct a road through Merrillon at the point desired by him, yet it would take money to get it there, and that he should contribute liberally to that end if he desired the road. Mr. Merrill, in view of my representations and of Ketchum's representations in regard to the necessities of the road, under date of April 10th, 1872, contracted to furnish the railroad with certain rights of way and to subscribe $50,000 to the capital stock on condition that the road should pass through his property at Merrillon at a given point. Mr. Merrill was at that time in trouble with the West Wisconsin railway, and that railway company had established a station a few miles on either side of that place, but refused to stop its trains at Merrillon. Mr. Merrill was very anxious not only to have the road come to Merrillon but was very anxious to build up a town there, and the thing was thoroughly discussed in all its bearings between Merrill, Ketchum, and myself. Merrill, under a contract, also dated October 10th, 1872, agreed to give me a certain forty-acre tract at Merrillon and some other lands with the understanding that I would assist in building up a town there.

Q. Which Mr. Merrill is this?

A. L. G. Merrill. If I would plat that land and sell lots at

reasonable rates and try and get settlers in there, he stating that the arrangement would add to the value of other lands which he owned in that vicinity. It was agreed that I should try to build up a town there and should make a plat. Under this contract he agreed to give me certain lands at a certain time. Mr. Merrill, under date of August, of the same year, for the same reasons and for the same consideration, gave a contract for another piece of land in the same vicinity. The construction of the road was continued, and was built as agreed, and the subscription of $50,000 from Mr. Merrill to the stock of the company, and the right of way became due from him. I platted this land and undertook to get settlers in there and undrrtook to help him build up a town. I used my influence, also, as agreed when he gave me those two con-
122 tracts with the West Wisconsin railroad, to get that road to stop its trains at Merrillon and make a station there, and finally succeeded in so doing with the assistance of Mr. Ketchum. For various reasons, mainly because of some misunderstanding between L. G. Merrill and his brother, Ben. Merrill, who had an interest in this matter, and the railroad company and myself on the other side, the deeds in furtherance of these contracts were not given until the summer of 1877. In June, 1877, on behalf of the railroad company and on behalf of myself, individually, I made a proposition to L. G. Merrill for settlement under those three contracts to which I have alluded.

PLAINTIFF'S COUNSEL:

Q. When was that?
A. It was in June, 1877.

Continuation of answer: Proposed a basis of settlement as between L. G. Merrill, his brother, and the railroad, and as between L. G. Merrill, his brother, and myself, and the basis of settlement which I proposed at that time, June, 1877, was accepted by the Merrills, and during the summer of 1877 they came to Green Bay with their families and a settlement was made, Mr. Merrill giving the railroad company the right of way, and in the place of the $50,000 which he had subscribed to the stock a lot of stock of the Iowa Lumber Company. Mr. Merrill, during the construction of the road, had paid in material and supplies on account of his $50,000 subscription about $10,000 that was allowed him in the settlement between himself and brother and the railroad company. The balance of the $50,000 was taken in the Iowa Lumber Company stock, which was supposed at that time to be of some value. After that arrangement had been made then the two contracts between L. G. Merrill and myself were taken up, and he and his brother and their wives gave to me, individually and personally, deeds of the land which they had previously contracted to me. I hold in my hand here the basis of settlement. It was a proposition which I made to L. G. Merrill and which he accepted, and on which, as a basis, the deeds were finally made and delivered.

Q. Very well. That, you say, is a proposition you made which they accepted?

A. The settlement is made on that basis; yes, sir.

Defendants offer this paper in evidence in connection with the testimony of this witness, marked "Defendant's Exhibit A."

(Objected to, because there is nothing to show what it is and no signature.)

Q. You say that paper contains the——

(Contents of paper objected to.)

A. I cannot state, Judge, what the statement was, exactly. I can refresh my mind with the memorandum.

Q. You may state.

A. Under the contract of April 10th, 1872, between the Merrills and the railroad company, by which they were bound in the sum of $100,000.00 to convey to the railroad company by a sufficient warranty deed a strip of land 100 feet wide through lands traversed by the road of said company, and to subscribe $50,000 to the capital stock of said company—under that contract, I say, the following settlement was made, the deed of right of way was given, a credit of about ten thousand dollars was allowed on account of the $50,000 subscription, and $75,000 capital stock of the Iowa Lumber Company was given by said Merrill to the railroad company.

123 The Merrills gave to the railroad company, in connection with this settlement, a written guaranty that the debts of the said lumber company did not exceed $5,000.

(Testimony as to guaranty objected to unless the guaranty is produced.)

A. And also a written guaranty that the capital stock of the Iowa Company did not exceed $140,000 in all. Under the contract of April 10th, 1872, between the Merrills and D. M. Kelly this settlement was made.

PLAINTIFF'S COUNSEL: Are you refreshing your memory from one memorandum or more than one, Mr. Kelly?

A. There is quite a number of things set forth in this memorandum.

PLAINTIFF'S COUNSEL: It is one paper, is it?

A. It is one paper, and there are several things set forth. The Merrills conveyed to me one equal undivided one-half of lots 2 and 5, section 3, township 22, range 3, and all one equal undivided one-half of the water power and boomage about and above Mormon Riffle, and all of the southwest one-fourth of the southwest quarter of section 23, township 23, range 4, in Trempealeau county. And under the contract of August 10th, 1872, between the Merrills and myself the settlement was made that conveyed to me 150 feet in width on each side of the railway right of way, which was 100 feet wide, and which was conveyed to the railroad company under the contract between Merrills and the railroad company April 10th, 1872; those were the settlements made under those three contracts.

The settlements were never concluded according to the three contracts which were made several years previously and in 1872, excepting the case of the contract between Merrill and the railroad company, and under that contract the right of way was given as agreed; but, instead of the $50,000 subscribed to the capital stock, they gave their credit of about ten thousand dollars of materials and supplies furnished the railroad during its construction and $75,000 capital stock of the Iowa Lumber Company. The distinction between the contract was kept up from the time they were made—from the time they were negotiated, in fact, until this settlement was made. It was expressly stated to L. G. Merrill by myself that the first contract to which I have alluded was for the benefit of the railroad company, and that the other two contracts were for the benefit of myself personally and individually. The intent was carried out, and the same distinction was kept up, and the three deeds, one running to the railroad company and two running to myself, were made by the Merrills and their wives.

Q. Who paid for the land contracted and conveyed to you by the Merrills?

A. I paid for it.

Q. Did the company pay for it?

A. There was no money, Judge, as I have explained, in the consideration; the consideration was paid by me.

Q. None of it paid by the company?

A. None of it paid by the company.

Q. Was there any?

A. There was no money whatever paid.

Q. Was that donation to the company?

A. The right of way was a donation. The stock—let me explain, Judge—to which he, L. G. Merrill, subscribed was $50,000 in amount.

124 Q. None of the company's means were paid by you for the land contracted and conveyed to you?

A. None whatever.

Q. Your interests and the company's interests were kept separate throughout, were they?

A. They were considered separate in the negotiations with Merrill and brother; they were treated as separate interests all through. The deeds were given for the separate interests, and the contracts were so called for, and it was so understood.

Q. Was any of the property in the towns of Manawa or Blair, or secs. 32, 23, and 21, acquired by you for the use or benefit of the railroad company, otherwise than as regards the right of way and depot grounds?

A. None of it was acquired for the use or benefit of the railroad company with the exception that I always intended, as I said before, to give the railroad company rights of way and depot grounds, free of charge, where I owned lands.

Q. Was no portion of the consideration for these lands furnished by the company?

A. None whatever.

Q. Were you ever trustee for the company for any of these lands mentioned in Seymour, Manawa, or Blair?
A. I never was trustee of the company.
Q. Did you buy any of these lands in trust for the company?
A. None of them.
Q. To hold in trust for the company?
A. Acquired them for my own use and benefit.
Q. Did you buy any of these lands in trust for the company, except the Sechlar tract, and such lands as you intended to convey to the company for rights of way and depot grounds?
A. None whatever; I did not purchase the Sechlar tract, I received it as a donation.
Q. And you took the deed to yourself as agent?
A. Yes; you used the word "buy." I took that for the railroad company; that is the only tract I took for the use or benefit of the railroad company. I suppose that Sechlar deed you want put in evidence, don't you?
Q. Oh, yes, we will; your documentary evidence, after we have a chance to look it all over.

WITNESS: Here is the deed.

Q. What is the date of it?
A. 1876.

(Deed received in evidence and marked Exhibit "B.")

Q. Have you examined the bill of complaint in this action and read it?
A. I have examined the bill of complaint.
Q. You have, and the description of the land therein mentioned?
A. I have.
Q. The order referred to?
A. I have.
Q. Were any of those lands obtained for the benefit of the railroad company?
A. None of them whatever.
Q. Lands now described in the bill of complaint and referred to there?
A. None of those lands were so obtained.
Q. That Sechlar tract described——
A. It is not described in the complaint.
Q. Well, in the answer which you now give, do you refer to the lands described in the bill or to the lands referred to in general terms there? I think you have stated in general terms that you had some lands.
125 A. I will state that none of the lands described in the bill of complaint were obtained by me in trust for the railroad company.
Q. Do any—are any of those lands which the railroad passes over—do they include the rights of way and depot grounds—I mean lands described in the bill of complaint?

A. The right of way passes over some of those lands, and there are some depot grounds.

Q. Then, you mean in your answer, except the rights of way and depot grounds? You answered that none of them were required for the use of the railroad?

A. I answered that I didn't obtain them in trust for the railroad company. As a matter of fact, as I before stated, I intended to give the railroad a deed free for right of way and depot grounds described in the complaint and referred to therein.

Q. Did the consideration for those lands or any portion of them come from the railroad company, so far as there was actually any consideration paid?

A. None of it whatever.

Q. How is it in regard to the lands conveyed to Ketchum or Hiles—lands the same lands referred to in the complaint, were they?

A. I don't think I have conveyed any lands to Ketchum.

Q. Anybody else—by anybody?

A. I sold—you mean conveyed from me, Judge?

Q. No; conveyed by anybody or by you to them?

A. No lands conveyed to Ketchum or Hiles, except the right of way to which I have alluded in the first part of my testimony; the company furnished no money whatever.

(Objected to because witness does not state that lands were conveyed to Hiles or Ketchum.)

WITNESS: I had charge of the purse-strings of the company, and I know very well where the money went.

Q. You had control of the money of the company at that time?

A. I had control of the funds, and no money was paid out without my approval. I know that no money ever went from the company to pay for lands contracted for by Hiles or Ketchum, except for rights of way, and I have alluded to those exceptions in the first part of my testimony. I would like to add also, here, that Ketchum, as acting right-of-way agent, purchased rights of way in a number of places for the company, and I approved the vouchers which were paid for it. In most cases the right of way was taken in the name of the company.

Q. I believe you have already stated in regard to the lands conveyed to you, — conveyed the same as those conveyed to Hiles and Ketchum, as far as the company was concerned?

A. I have so testified.

Q. Did I ask you whether any of those lands were intended to be conveyed to the company?

A. None that I have any knowledge of.

PLAINTIFF'S COUNSEL: It is bad enough to ask a witness' intentions when there are any intentions.

Witness' answer objected to because incompetent.

Q. Did you intend to convey any lands you conveyed to yourself to the company?

A. I never received a title to any lands except this Sechlar
126 land in trust for the company, which I intended to convey to the company, with the exception of the rights of way and station grounds.

Q. Did you buy any of the lands which are in question in this suit while you were an officer of the company—speaking now with reference to the original purchase?

A. No; they were all purchased and obtained while I was contractor.

Q. Deeds for some of them may have been given to you while an officer under contracts made while you were contractor?

A. Some of them may have.

Q. But the original purchases were made while you were a contractor and not an officer?

A. That is the fact.

Q. Then the conveyances which were made to you were all made in pursuance of the original contracts of purchase, were they?

A. They were.

Q. Has there been—have any of these lands been secretly secured or conveyed to anybody else for the purpose of keeping them out of the way of the railroad company?

A. Not an acre or any portion of them whatever.

Q. Any obtained in the name of anybody else for any such purpose?

A. None whatever.

Q. All been taken in your own name or in the name of some one of these defendants?

A. All been taken in that way.

Q. Were the contracts for the deeds recorded or were they not?

A. I think in some instances and in some they were not.

Q. You may state how it happened that you acquired title to any of this property with Hiles if you have not already stated that.

A. I think that has been stated, Judge.

Q. Well, you conveyed it afterwards—conveyed it back, did you not—conveyed your interest?

A. I sold out to Mr. Hiles my interest in certain locations.

Q. Well, you may state all the facts and circumstances respecting the sale of lands to Mr. Hiles from Briggs, Thurston, and Porter.

A. Hiles and myself were interested together in lands at Taylor, Blair, and Arcadia, and he was desirous of purchasing my interest, and he made a proposal at one time for my interest and I sold out to him. I think the time the sale was made some interest that I held in the Boom Company, at Dexterville, was also included in the sale. Hiles and myself were stockholders in the Scranton Manufacturing and Boom Company and the Dexterville Manufacturing and Boom Company, and he made me an offer for my stock in those two companies and for my interest at Taylor, Blair, and Arcadia, and after some negotiation I accepted his proposition and sold out to him my interest in those matters, he paying me about $7,000.

Q. That was not for lands only?

A. No; it included my stock in the Dexterville Manufacturing and Boom Company and the Scranton Boom and Manufacturing Company.

Q. Well, you say you sold out your interest in the Briggs, Thurston, and Porter lands?

A. Yes, sir.

Q. To Mr. Hiles?

A. For $7,000.

Q. And other property which you mentioned, for $7,000?

A. Yes, sir.

Q. You may state all the facts in regard to it.

127 A. As I before stated, I held a considerable interest in the stock of the Dexterville Manufacturing and Boom Company, and also in the Scranton Manufacturing and Boom Company. I also held an interest in company with Mr. Hiles in some 12,000 or 14,000 acres of land away from the line of the Green Bay & Minnesota railroad. I also owned an interest in the land at Taylor, Blair, and Arcadia. I sold out the whole interest to Mr. Hiles and he paid me.

Q. What proportion of the lands were the lands bought of Briggs, Thurston, and Porter—what proportion of all the property that you sold to Hiles?

A. Oh, I presume I had a third interest in from 400 to 500 acres belonging to these parties or deeded by those parties.

Q. That came from Briggs, Thurston, and Porter—a third interest in 400 or 500 acres?

A. I should think there might have been 400 or 500 acres in Taylor, Blair, and Arcadia in which I had a third interest.

Q. Now, how much of this 400 or 500 acres at Blair and Arcadia, got by any parties, have been useful to the railroad company; how much of this 400 or 500 acres of land?

(Objected to.)

A. I don't think any of it was necessary to the railroad company's use or has been used by it.

Q. None of it whatever, not even for the right of way?

A. Except so far as the right of way is concerned and, I think, the depot grounds.

Q. Well, how much did that cover—the right of way and the depot grounds? How much would it take of the 400 or 500 acres?

A. Five acres.

Q. How far did it extend from the railroad—this 400 or 500 acres?

A. Well, I can't state the shape in which the railroad runs through these different tracts, whether lengthwise or otherwise.

Q. I think you stated before that Hiles was not a partner of yours in any of the contracts in building the road. Was he a partner of yours in reference to the purchase of these lands?

A. We were interested in the Briggs lands and in the Thurston lands and in the Porter lands.

Q. There was no partnership transaction—no partnership agreement, I mean?

A. None whatever, except that we bought these lands in company. So far as Hiles' contracts with the railroad were concerned, I had no interest in them in any way, shape, or manner in the world. Mr. Hiles was a contractor for the grading of a considerable portion of the road, and there were written contracts between himself and the railroad company.

Q. Well, have you stated fully what you received from Mr. Hiles for your conveyance to him of your interest in this property?

A. Well, I received $7,000.

Q. Money?

A. Yes, in money.

Q. Who paid you that money?

A. I think Mr. Hiles gave me paper, but I finally got money out of it.

Q. Was any of that land which you conveyed to Mr. Hiles bought for the use of the company and benefit of the company?

A. None of it whatever.

128 Q. Was it necessary for the use of the company, except that portion covered by the right of way and depot grounds?

A. The only portion necessary was such portion of the lands as was used for rights of way and depot grounds by the railroad company.

Q. Is any consideration which you received for the land or your interest in the property which you sold to Mr. Hiles the property of the railroad company?

A. None of it.

Q. Have they any interest in it in any manner?

A. None whatever.

Q. Known to you?

A. Not the slightest.

(Objected to on the grounds that whether the railroad company had an interest in the land or not is a conclusion of law and not a question of fact.)

Q. Do you know of any agreement or understanding had between yourself and the railroad company which gave the company any right to those lands or any interest in them, or a right to the consideration which you received for it or any interest in them?

A. There was no such agreement.

Q. Any such understanding?

A. No such understanding.

Q. Have you ever conveyed any pieces of land to August Gehr?

A. I testified to that, Judge, elsewhere.

Q. You didn't convey the land to him?

A. I gave a contract and received $25.

Q. He had a deed of it?

A. There was no deed.

Q. Did you get—did you obtain that lot for the railroad company?

A. It was not; it was obtained for my own use individually.

Q. Necessary for the use of the railroad company?

A. It was not.

Q. Is that portion of the five acres or any five-acre tract?

A. It is a portion of the land received from one of those parties—one of those Seymour parties who have been named by me, but I cannot say which one.

Q. I believe you have testified—and that is material—in regard to your becoming surety in different suits, etc.?

A. All in regard to the Garsia suits.

Q. Did I ask you the question why—why have you not conveyed to the company the rights of way and the depot grounds?

A. The reason is the reason which I have before given, that I was liable on account of certain suits for the railroad company, and that I desired to be protected before donating to the company the property which belonged to myself, and for a portion of which at least I had paid a considerable sum of money.

Q. Any other reason?

A. Another reason may be that no demands have ever been made upon me to give title to the rights of way and depot grounds.

Q. Have you the contract here in which the railroad company, as alleged in your answer, assumed and agreed to pay all indebtedness and liabilities of yours contracted and incurred in or about the business of the company?

A. That is the contract of February 12th, 1872, a copy of which is attached to my answer. I have the original here.

PLAINTIFF'S COUNSEL: Are you going to introduce the original, Mr. Ellis?

Mr. ELLIS: Yes; I believe I will introduce those to-morrow.

129 Q. Have you always been ready and willing to convey the rights of way and depot grounds if you were indemnified?

A. I have always been ready to do that, and have made the proposition in writing to do so, to which proposition I have never received an answer, unless you consider the commencement of this suit an answer.

The taking of further testimony was here adjourned until Tuesday morning, November 11th, at 9 o'clock.

TUESDAY, *November 11th*—9 o'clock a. m.

Parties met pursuant to adjournment and proceed with the examination of Mr. Kelly.

By Judge ELLIS:

Q. You speak of three several contracts under which you acted as contractor in building the railroad. Have you those contracts before you?

A. I have.

Q. Now, look at the contracts.

A. There is the first contract, "Exhibit A." 2. July 23rd, 1871 (0).

Q. That is the copied one?

A. That is the original. There is the second contract, June 5th, 1871, "Exhibit B." 2. Third contract, February 12th, 1873, "Exhibit C."

PLAINTIFF'S COUNSEL: No objection; these can go in.

All the signatures to the three contracts are admitted by the plaintiff's counsel to be genuine.

The three contracts are here offered in evidence by the defendants.

Q. Now, look at that paper. You spoke yesterday of having been obliged to defend a suit brought against you by—what is his name there?

A. E. C. B. Garsia.

Q. State whether or not that is the complaint or copy of the complaint which was served on you in that action?

A. It is a copy of the complaint served on me; yes, sir.

(Copy of the complaint offered in evidence by the defendant and marked "Exhibit D.")

(Objected to on the ground that it is totally immaterial.)

Q. Mr. Kelly, were you present at the examination of the witnesses in this case July and August last?

A. I was.

Q. Did you hear the testimony of this man Wade; I think the name is David, is it not?

A. David Wade. I heard the testimony of that witness.

Q. You remember the transaction of the purchase of land at Whitehall by yourself and Ketchum?

A. I know Mr. Ketchum purchased of Mr. Wade a large tract of land at a point now called Whitehall.

Q. You know the tract of land?

A. I do.

(Objected to as hearsay testimony.)

Q. You have seen the land?

A. Yes, sir; I have.

Q. Did you see it at about the time it was purchased?

A. I did; Mr. Ketchum consulted me in regard to the purchase of it.

(Objected to as hearsay.)

Q. Witness Wade testified that the price agreed upon for that land was $3,500. State what the land was worth at that time?

(Objected to because no testimony has been introduced to show that the witness is an expert in the value of land.)

130 Q. Are you familiar with the value of land, or were you familiar with the value of land at Whitehall at the time when that purchase was made?

A. I was.

Q. Now state what that land was worth.

A. $3,500 was a very full price for it; it was more than the land was worth at that time, and it was all the prospective value was worth.

Q. About how many acres were there, do you remember?

A. About 280.

(The part of witness' answer which relates to prospective value is objected to.)

Q. Do you know whether that land was platted or not; and, if so, by whom?

A. It was platted by Mr. Ketchum after it was purchased from Mr. Wade.

Q. Was any portion of it used for the depot or track of the railroad company or right of way?

A. The road runs through a portion of it, and the Whitehall depot is located on a portion of it.

Q. Do you remember whether it goes through the middle of it or on the side of it?

A. Well, my impression is that the land is wider—that the length of the road through it is not the widest part of the land; I don't know just how much is taken by the right of way through that land.

Q. How much land was necessary to the use of the road?

Objected to.

A. In addition to the right of way 4 to 5 acres is ample for all railroad purposes at that place.

Q. In addition to the right of way?

A. Yes, sir.

Objected to.

Q. Is that one of the tracts with respect to which you offered to convey to the company the right of way and the depot grounds, if they would protect you as surety?

A. That is one of the points included in that proposition.

Q. Now, do you remember the land bought from Mr. Briggs?

A. I know the land—know the location of the land—but I had no personal negotiation with Mr. Briggs.

Q. Do you remember the price that was paid for it?

A. $500, I think.

Q. $500?

A. $500.

Q. State whether that was the value of the land.

A. In my judgment, it was more than the land was worth.

(Objected to for the same reason stated before, that witness has not shown any familiarity with the land.)

Q. At the time when this Briggs land was purchased, and when all the other lands in question in this suit were purchased by yourself, or by Ketchum or Hiles, or either of them, were you familiar with the prices and value of lands along the line of that road?

A. I was over the line of that road a good many times, and I was familiar with the prices of land all along the line.

Q. Now state what that land, Briggs' land, was worth at the time it was purchased?

A. Not over $350.00.

Q. — you remember anything about the land of Dr. Marquis Wood—land bought of Dr. Marquis Wood?

131 A. I don't think any land was purchased of Dr. Marquis Wood; he donated some land.

Q. You may state what the facts were with regard to the acquisition of land from Dr. Marquis Wood?

A. I think that is pretty fully stated in my testimony of yesterday.

Q. Did you testify yesterday with respect to the fact that there were two tracts—one for the right of way of the company and the other for lands that were kept separate—I believe you did—lands conveyed to yourself and Ketchum?

A. That there were two deeds on Dr. Marquis Wood; I would not swear that there was or that there was not. I testified yesterday that the Dr. was very anxious to have a county-seat—anxious to have a town platted there—and that he, in consideration of those desires expressed to me on his part, agreed to give me a certain portion of land if I would assist him in getting the county-seat and platting the town there and in building up the place and making his other property valuable.

Q. And a portion of the land was deeded to you?

A. Yes, sir.

Q. And the other?

A. I don't know whether there were two deeds there or not.

Q. Did you hear the testimony of Sally Munger?

A. I did.

Q. Why was that land—that land of Sallie Munger—taken in your name?

A. Simply for the reason that the land belonged to me, and — intended to be used by me—held by me.

Q. Do you remember that was first bought by contract?

A. She gave a contract running to me.

Q. Have you that contract here?

A. This is it, I think. The contract is under date of November 24th, 1871.

Q. That is the contract, is it?

A. That is the original contract.

Q. Are you familiar with the signature? Did you see her sign that?

A. I had no personal knowledge of any negotiations with Mrs. Munger, or Miss Munger, whatever her name is. That contract was followed by a deed, in May, 1877; warranty deed of the same premises.

Q. The same premises described in the contract?

A. Yes, sir.

(Deed marked Exhibit "E.")

Q. Have you only one deed from Sally Munger?

A. Yes, I believe only one. Yes, here is another deed of the 1st of April, 1873.

Q. The other land?

A. I think, Judge, this is a deed of the contracted property. I think I was wrong in saying the deed of 1877 was the deed of the contracted property. I think that deed of 1877 was given by reason of an exchange of one strip of land belonging to myself for another strip of land belonging to Miss Munger, and we exchanged deeds by reason of that arrangement. That was the deed of 1877. I think that deed of 1873 is the deed called for by the contract.

Q. And you state that the deed of 1873 was the deed of the same lands specified in the contract, and was given in pursuance of the contract?

A. That is the fact, I understand.

132 Q. You remember anything about—you remember the testimony of Simeon W. Munger?

A. I do.

Q. You can state what you desire respecting his testimony while I am looking this over.

A. I think Mr. Munger testified substantially to the truth. He testified, as I recollect, that he deeded land to me, which was the fact, and, so far as I know, no representation was made to him except that the land was for my sole use and benefit, personally and individually.

Q. Did you have any conversation with him yourself respecting the purchase of the land?

A. No, sir; not the time the contract was made.

Q. Who did?

A. I think I can tell; either Ketchum, the president; Mr. Randall, chief engineer, or W. J. Abrams, made the negotiation with Mr. Munger.

Q. I believe you testified in regard to the Merrill property?

A. I wish to say in regard to B. H. Merrill's testimony, given at the time referred to, that L. G. Merrill, his brother, is the business man of the two—is the largest owner of the property which was conveyed by the Merrills. All my negotiations were had with L. G. Merrill, and I had no negotiations or talk with B. H. Merrill with regard to the property conveyed to the railroad company or to myself until the final settlement in the summer of 1877, when B. H. Merrill came to Green Bay with his wife and with his brother and his brother's wife, and there the final deeds were made; but the original negotiations as between the railroad company and the Merrills and as between the Merrills and myself were made with L. G. Merrill.

PLAINTIFF'S COUNSEL: G. or J.?

WITNESS: L. G.

Q. Well. who made them?

A. Unless Ketchum, the president of the company, had some negotiations with B. H. Merrill, the negotiations between the Merrills and the company and between the Merrills and myself were made

by Henry Ketchum and myself on the part of the railroad company and myself individually. R. N. Merrill had very little to do with any negotiations, and was not consulted, so far as I know, in regard to any negotiation, only when the final settlement came to be made.

Q. Well, did you make the negotiation yourself for the original purchase?

A. I did, together with Mr. Ketchum and Mr. Hiles.

Q. What was the original understanding?

A. Do you wish me to go over it?

Q. Did you state that yesterday?

A. Yes, sir; I did. Did you desire to ask me any questions in that regard?

Q. There was one matter, I think, you did not allude to. I think there is an allegation in the bill of complaint in regard to the consideration of the conveyances. I would like to have you state what the fact was about that. It is alleged somewhere or other that a part of the consideration was a lot given to a church. I want to know what the fact was about that? The plaintiff alleged that the consideration given for the property by the deed from B. H. Merrill and L. G. Merrill was the erection of a depot at or near the property, and of a lot donated for church purposes, and was a lot donated by the railroad company. Now, what are the facts?

A. The consideration was, as I stated in my testimony yes-
133 terday, between the making by the Merrills of their contracts with the railroad company and myself and the execution of the deeds in keeping with the previous views of the contracts some years elapsed. When the Merrills came to deed me a forty-acre tract, which they had agreed in their contract to convey to me, I found that they had sold several lots out of that tract, and finally I waived those lots, so far as the execution of the contract by them was concerned; and at that time B. H. Merrill said to me, Mr. Kelly, we have agreed to give a the Methodist Church Society of Merrillan a lot to build their church on out of the forty acres. Now, I wish you would agree to give deed in keeping with our agreement. I replied that they had made that agreement without any authority from me; that the land was my own, and a deed had been due me some time, and that I did not feel obliged to carry out any such agreement, but that I would consider the matter and come out to Merrillan and look the ground over, and do whatever was fair and right. Nothing more was said, and the deed was executed to me with nothing in it with regard to the church lot. I went up to Merrillan several weeks thereafter, and B. H. Merrill showed the land to me which the Methodist church desired. After I returned home I made a deed to the trustees of the Methodist church of the lot desired by them at a nominal consideration, and conveyed it to the trustees of the church; but when the contract was made to convey to me that forty acres there was no Methodist church there, and there was none thought of, to my knowledge, and nothing was said about giving them a lot. It was simply a donation which the Merrills had made out of my property, which was mine under the contract, and in view of its being a church matter—in view that a church was a very

desirable thing at Merrillan—I consented to give them this lot free, and did so a few weeks after the deed of the forty acres had been made to me. It was no part, in any way, shape, or manner, of the consideration as between me and the Merrills.

Q. In another part of the complaint it is alleged that assurances were given by you and Ketchum, I think, that those lands which were purchased—lands now in dispute—were actually purchased for the benefit of the company; and it is alleged that assurances of that kind were given to individuals. Now, did you give any such assurances or make any such representations?

A. I never gave any such assurances nor authorized any such assurances to be made; never desired any to be made.

Q. Did you make any representations of that kind—any statements whatever to that effect?

A. Never made any representations of that kind whatever.

Q. Can you state about what amount of money you have paid for the land described in the complaint?

A. I paid out in cash between $2,000 and $2,500—somewhere in the vicinity of $2,500—on account of those lands?

Q. What was the whole amount paid for them?

A. Something over $5,000.

Q. By yourself—by whom?

A. Mr. Ketchum and myself principally; Mr. Hiles paid something on one or two tracts. I would like to add that no portion of that money was furnished by the railroad company, and that no tender has ever been made to me of any portion paid out by my associates or by myself on account of the purchase of those lands described in the complaint.

134 Q. And no tender has been made—has any offer been made?

A. Not any.

Q. Any proposition to ascertain the amount?

A. No attempt whatever has been made of the kind.

Q. None by the company? Has any ever been made by the receiver?

A. None.

Q. Well, Mr. Kelly, I believe that is all I want to ask you, unless there is something occurs to your own mind.

A. Let me look that over, Judge. I think there was some more documents you wanted to produce.

Q. Yes; I intend to produce them.

PLAINTIFF'S COUNSEL: You wish to put in any further documents?

DEFENDANTS' COUNSEL: You wish to have them put in now?

PLAINTIFF'S COUNSEL: Yes.

DEFENDANTS' COUNSEL: Three contracts we have already put in.

Q. You spoke yesterday of having resigned as an officer of the company. When did you tender your resignation?

A. It was prior to the making of the first contract, July 23d, 1870. I don't remember the exact date of my resignation, but it was prior to the making of that contract and was in July, some time prior to the 23d.

Q. What offices were resigned by you at that time?
A. I was at that time a director in the company and vice-president of the company.
Q. Resigned both as vice-president and as director?
A. I did.

DEFENDANTS' COUNSEL: You have the record book of the company here, Mr. Larned?
PLAINTIFF'S COUNSEL: Yes.

Q. Will you refer—find portions of the record which you say——
A. The records of the company, July 27th, 1870; those are the three contracts.
Q. Now, which is the——
A. I wish to introduce the records of the company of July 27th, 1870, so far as they relate to my resignation.
Q. Now, on what pages are they?
A. Pages 105 and 106.
Q. Have you got copies of those—all embraced in this?
A. I don't know what they all are, Judge.

PLAINTIFF'S COUNSEL: We will have the original books here at the time of the hearing.

Q. They are all or nearly all there?
A. I could not tell you, Judge.
Q. Just read off those portions.

Plaintiff stipulates to have the original books on the hearing; if not produced, then the copies of the books as introduced in evidence appearing from the record shall be used in lieu of the books, including the minutes of the reporter.

Record Testimony, Page 105, *Record Book.*

Minutes of the proceedings of the board of directors of the Green Bay & Minnesota Railroad Company.

Volume 1st, page 105, July 20, 1870:

At a meeting of the directors of the Green Bay & Lake Pepin Railroad Company, held at their office July 20th, 1870—present, A. Klaus, D. M. Kelly, D. D. Robinson, H. Ketchum, W. J. Abrams, J. S. Featherly, George Somers, and J. Whitney—D. M. Kelly
135 tendered his resignation as a director of this company. On motion, the resignation of D. M. Kelly, director, was received and accepted.

On page 106 of the same volume a proposed agreement to be made—same date—a proposed agreement to be made between this company and D. M. Kelly is hereby ratified and approved, and the president and secretary are hereby authorized to execute it under the corporate seal of this company, and a duplicate copy of said contract be placed on file by the secretary in this office.

Resolved, That the president and secretary are authorized to execute a sufficient power of attorney constituting D. M. Kelly its agent under the provisions of the above-named contract.

Q. Was there anything further with regard to your resignation?

A. I wish to say, also, that I resigned as vice-president at the same time, as I recollect. The charter provides that the vice-president must be a director, so I presume the secretary thought it was sufficient to note my resignation as director, but in fact I resigned as vice-president at the same time.

Q. That you know?

A. That I know.

Q. Who was secretary at that time?

A. J. Whitney.

Volume 1st, page 11, November 3rd, 1870, the following resolution was offered and read:

Resolved, That the time in and by the agreement of July 23, 1870, between David M. Kelly and the G. B. & L. P. R. Co. limited to said Kelly for the procurement by him of the completion of said railroad to New London be, and the same is hereby, at his request, extended to the first day of October, 1871, and that for and in respect to each and every five miles of said railroad, measured from the eastern terminus thereof, on or near the Fox river, $50,000 in and of the full paid capital stock of said company, at par value, be issued and delivered to the said Kelly whenever and as fast as such stated distance of five miles shall have been duly graded ready for the ties; and that the residue of such capital stock, which may, by virtue of such agreement, as hereinbefore firstly named, become issuable to said Kelly, be issued and delivered to him at the rate and time originally provided in said agreement, and that the foregoing variations of said agreement be taken and admitted to have been made on the 23d day of July, 1870, to the exclusion of any conflicting provisions therein contained.

Resolved, That the foregoing variations of said agreement be endorsed upon the said original agreement on file, and upon the duplicate thereof in the possession of said Kelly, and executed by both parties thereto in the same manner as the original and duplicate are executed. This amendment to the original contract is made with the understanding that if the said Kelly shall not, on or before the first day of May, 1871, have made an arrangement and closed negotiations for iron for eighteen miles of road, under and by reason of such arrangement or negotiation, the said iron shall be actually delivered to said company, then this agreement and the original contract to be null and void.

On motion the same be adopted, the ayes and noes were called, A. C. Klaus, W. J. Abrams, H. Ketchum, C. B. Robinson voting aye and J. Whitney voting no.

Volume 1st, page 147, June 5th, 1871:

136 The president presented a draft of a contract of D. M. Kelly, which was allowed. Resolution number three, approving contract of D. M. Kelly, and directing the president and secretary to execute the same.

PLAINTIFF'S COUNSEL: What page is that?

WITNESS: Page 147, volume 1st.

Volume 1st, page 151, June 22nd, 1871:

Resolved by the board of directors of the Green Bay & Lake Pepin Railway Company, That a power of attorney be granted and executed on behalf of this company by the president and secretary and under the seal of this company to David M. Kelly, of Green Bay, Wisconsin, giving and granting unto him full power and authority for and on behalf of said company to negotiate in the United States and Europe, or either, the first-mortgage bonds of this company, and if by him deemed necessary to accept part payment therefor in railroad iron of good quality, at current market rates or prices, and in full power of substitution of attorney in his discretion.

The introduction of that portion of the records last read is objected to on the ground that it is totally irrelevant.

Page 152, same volume, same date:

Resolved by the board of directors of the Green Bay & Lake Pepin Railway Company, That the foregoing resolutions or either of them shall not be construed as in any manner inconsistent or in conflict with the contract between this company and David M. Kelly made on the 5th day of June, 1871, or anything therein contained, but as in aid of said Kelly in carrying the same into effect.

Volume 1st, page 156, February 12th, 1872:

D. M. Kelly appeared and presented for the consideration of the court a draft of a contract, which was read. Resolution No. 1, relating to draft of contract and approval of same, as follows:

Resolved, That the contract between D. M. Kelly and this company just read is hereby ratified and approved; and the president and the secretary are hereby authorized and directed to execute the same under the corporate seal of this company, and that a duplicate copy of the same be placed on file by the secretary at his office; which was unanimously adopted.

Volume 1st, page 164, April 1st, 1872:

Resolved, That the contract made on the 12th day of last February by this company with David M. Kelly be, and the same is hereby, ratified and affirmed by the present board of directors.

Resolved, That the secretary be requested to procure the signatures of all the directors to the foregoing resolution before recording it.

Then follows the signatures: M. D. Peak, Wm. E. Peak, George Somers, Samuel Marsh, Jr., Fred. S. Ellis, W. J. Abrams, Walter Scranton, E. A. Bradley, H. Ketchum.

Volume 2d, page 15, April 6th, 1874:

At four o'clock the polls were closed, and having canvassed the whole number of votes cast, show 48,351, upon each of which was named nine candidates for director, of which votes D. M. Kelly received 48,351, Henry Ketchum, ditto; M. D. Peak, ditto; W. J. Abrams, ditto; George Somers, ditto; Fred. S. Ellis, ditto; W. E. Peak, ditto; E. F. Hatfield, Jr., ditto; Walter Scranton, ditto; and 48,351 being a majority of all outstanding shares, and each of the above-named persons, having received all of such votes, is hereby declared unanimously elected a director for the ensuing year.

Volume 2d, page 17, April 5th 1875:

On motion, the board proceeded to elect a president, vice-
137 president, secretary, and treasurer. W. E. Peak was appointed teller. For president, Henry Ketchum received seven votes; for vice-president, D. M. Kelly, six votes; secretary, W. J. Abrams, six votes; treasurer, W. R. Hancock, seven votes; whereupon they were declared elected as officers for the ensuing year.

Same volume, page 17, April 5th, 1875:

On motion of W. J. Abrams, D. M. Kelly was elected general manager for the ensuing year.

Vol. 2, page 22, August 31st, 1875:

The committee appointed to examine the accounts of D. M. Kelly make the following report:

Your secretary, appointed under and by virtue of a resolution adopted at a meeting of its board April 5th, 1875, offer the following report:

We find by an examination of the records of the secretary of this company that at a meeting of the board of directors of this company, held February 12th, 1872, a resolution was adopted, under and by virtue of which a committee was appointed at the request of D. M. Kelly, contractor, to examine his accounts preparatory to transferring them from his, the said Kelly's, books to the books of the treasurer of this company, and that on the 13th day of May, 1872, the committee was appointed to make a report, which was accepted by the board of directors of this company, and which report covered the time during which the contracts of July 23, 1870, and of June 5th, 1871, between this company and D. M. Kelly were in force and valid, and up to March 5th, 1872.

Your committee did not therefore deem it necessary to go into an examination of the vouchers included in the report referred to.

Noted under the contract of February 12th, 1872:

All money received by D. M. Kelly from the sale of mortgage bonds, municipal bonds, and stock was to be disbursed through the proper officers of the company, and as all disbursements on account of this company have since March 25th, 1872, been made through the treasurer of this company and the account of them has been kept by him and proper vouchers taken and kept by him, it was not deemed necessary either to go into an examination of the vouchers of a later date than March 25th, 1872.

Your committee find that between July 23, 1870, the date of the first contract referred to, and December 18th, 1873, the date of the completion of the road under the last contract referred to, there was delivered to Mr. Kelly $3,200,000 of first-mortgage bonds of this company, and $599,000 local aid bonds; and that from the sale of $3,110,300 of first-mortgage bonds Mr. Kelly received in cash and material $2,114,870, and from the sale of $411,100 local aid bonds he received $308,310.33 while said contracts were in force; and that all the cash and materials so received by him, except the amount covered by the report of May 15th, 1872, were received by the treasurer of this company through Mr. Kelly, and disbursed through proper officers of the company; and that of the said first-mortgage bonds delivered to Mr. Kelly after the completion of the road he returned

to the treasurer $(8)9,700, and that of the said local aid bonds delivered to him he returned, after the completion of the road, to the treasurer $187,900.

There was due to Mr. Kelly on the 18th of December, 1873, a cash balance of $4,504.45, as was shown by the books of the treasurer on that day.

Your committee find that in negotiating the mortgage bonds of the company and the local aid bonds issued to this company,
138 and to further the negotiation of these bonds, Mr. Kelly gave, at different times, as bonuses, 18,869 shares of the capital stock of this company, and at different times, under and by virtue of the three contracts referred to, 60,167 shares of the capital stock have been issued to him, a part of which shares have been by him used to pay a portion of said bonuses; and that 1,562 shares of the capital stock are still unissued, and are held in reserve for subscriptions made by individuals and municipal corporations, who and which have not yet paid their subscriptions, and the 1,562 shares or any part of them, if not needed hereafter at a reasonable time to meet said subscriptions or any part of them, shall be delivered to Mr. Kelly as his property, under the provisions of the contract of February 12th, 1872.

Your committee find that on the 18th day of December, 1873, Mr. Kelly had complied with all the undertakings on his part set forth in the contract of February 12th, 1872, and was duly entitled to a discharge from it, and to all the benefits arising therefrom, because of the agreement therein contained on the part of this company.

Your committee, therefore, in view of all the facts and circumstances of the case, recommend the passage by this board of this resolution:

Resolved by the directors of the Green Bay & Minnesota Railroad Company, That D. M. Kelly, on the 18th day of December, 1873, had faithfully and fully complied on his part with the contract between him and this company of February 12th, 1872, and was and is legally entitled to the cash which has been paid to him by this company, and to the capital stock of this company which has been issued to him on account of said contract, and to the shares of capital stock not yet issued, if said shares or any portion of them shall not be needed within a reasonable time to pay the subscriptions or any proportion which have not been perfected; and the several agreements actually performed, entered into, and made by him in connection with the building and operation of this the road of the company during the existence of either or all of the contracts referred to are hereby acknowledged, approved, ratified, and affirmed, and made a part of the history, records, obligations, and doings of this company; and the same are hereby accepted as full performance of the said several contracts on the part of the said D. M. Kelly, and he is hereby discharged from *and* all manner of obligation by virtue of each and every one thereof.

Respectfully submitted,

F. S. ELLIS,
W. J. ABRAMS,
GEORGE SOMERS,
Committee.

Mr. Peak offered the following resolution:

Resolved, That the report of the committee, which has just been read, be accepted.

That the resolution therein recommended be adopted, and that the committee be discharged.

Adopted.

Cross-examined by Mr. LARNED, counsel for plaintiffs:

Q. What is your full name?

A. David Marsh Kelly.

Q. How old are you?

A. Thirty-nine years of age.

Q. When did you say you first had any connection with the Green Bay road?

139 (Witness refers to record.)

A. I have not said, Mr. Larned.

Q. I will ask you, then, now?

A. In April, 1870.

Q. You were then about 29 years of age. What had you been doing before that time, Mr. Kelly? What business had you been following?

A. At that time I had been following the profession of a lawyer; I had been general manager of the Lake and River Transportation Company.

Q. Where was that company?

A. That was a company running boats between Buffalo and Green Bay and Green Bay and Fond du Lac and Oshkosh and other river points.

Q. Were they steam vessels?

A. They were; and I was also at that time a member of the firm of Elmore & Kelly.

Q. What was the business of that firm?

A. We were dealers in grain, coal, and salt, and commission men.

Q. In what place?

A. Fort Howard, Wisconsin.

Q. You had been a railroad man, then, before that time?

A. I never had been connected with any railroad; I had been a transportation man for several years.

Q. That is, I understand you to say this Lake and River Company?

A. That is in connection with steam vessels.

Q. You hadn't had, ever, any connection with railroads before you became connected with the Green Bay & Minnesota or Green Bay & Lake Pepin, as it was then called?

A. No.

Q. Did you know Henry Ketchum at the time you went onto this road, in 1870?

A. I did.

Q. How long had you known him?

A. I think, for a year or two.

Q. Any more than that?

A. Not more than two years.

Q. Where did you meet him?

A. In Green Bay, I think, for the first time.

Q. In connection with business?

A. Well, I met him socially; we were introduced; I had no business with him the first time I met him.

Q. Did you have any business with him at any time before you went into this road?

A. We were not associated in business until I became connected with this road.

Q. Had you any business dealings of any kind with him before you went into this road?

A. I had not.

Q. Had you any with Mr. Hiles at the time you went into this road?

A. I had not.

Q. When did you first meet Mr. Hiles?

A. I think, in 1871.

Q. About a year after you went into this road?

A. About a year after; yes, sir.

Q. When did you first hear that there was such a road as the Green Bay & Minnesota or the Green Bay & Lake Pepin road—that there was such a company organized?

A. In the winter of 1869 or 1870 I visited Governor Horatio Seymour at his home in Utica, New York; he then was a be-
140 liever in wooden railroads, and suggested that a wooden railroad from Green Bay to New London would be a very good enterprise for Green Bay.

Q. You mean a road with wooden rails instead of iron?

A. I do; he inspired me somewhat with his enthusiasm and belief, and when I returned I went to Madison and obtained a charter from the Legislature for a railroad between Green Bay and New London, intending to build a wooden railroad that distance—forty miles in length.

Q. What was the name of the road you asked *on* the charter for?

A. I think it was the Green Bay & Western railroad; I am not positive. When I returned to Green Bay from Madison some directors—some gentlemen came to me and represented that they had in charge a project for a railroad from Green Bay to the Mississippi.

Q. Do you remember what directors made these remarks to you?

A. W. J. Abrams and C. D. Robinson.

Q. They stated that they had previously got a charter to build a road?

A. They stated they had a charter.

Q. That was an iron road, not a wooden road?

A. That was for an iron road. They thought that there was no encouragement for two roads to be built, and suggested that I should join them in assisting to carry out their enterprise; I think that was the first thing I ever heard of the Green Bay & Lake Pepin railway.

Q. That was in what year?
A. That was in the spring of 1870.
Q. And you joined them in 1870, you say, immediately?
A. Yes, sir.
Q. In what capacity did you first act when you first joined these gentlemen?.
A. I was chosen director and appointed vice-president.
Q. At the first meeting after you joined them in their enterprise?
A. Yes, sir.
Q. Was any of the railroad built at that time?
A. About five miles had been graded from Fort Howard west.
Q. That was all?
A. That was all.
Q. How much did you subscribe to the capital stock when you went in, Mr. Kelly?
A. I really have forgotten the amount.
Q. Well, in round numbers?
A. It was a few shares.
Q. No considerable amount?
A. No large amount of stock; no, sir.
Q. As much as two or three hundred shares?
A. I could not say; it was not over $500; I could not say, under that, how many.
Q. Did you pay up that subscription at that time?
A. I don't remember.
Q. Have you ever paid it up?
A. I think whatever I subscribed for I paid for; yes, sir.
Q. In full?
A. I think so.
Q. 500 shares?
A. My recollection is that some one of those directors made over to me, at that time, some other stock.
Q. Besides that subscription?
A. Besides what I may have subscribed.
Q. That was as a bonus, a sort of gift, to induce you to go in?
A. I suppose that was for the purpose to make me eligible to the offices of the company.
Q. Was Mr. Ketchum one that donated stock to you at that time?
A. No.
Q. Mr. Ellis?
A. No.
141 Q. Who are the directors that donated stock to you?
A. My impression is that Mr. Abrams or Mr. Klaus—Anton Klaus—and perhaps both transferred some property to me.
Q. Then your total subscription was not over 500 shares? That would be $5,000, and that, you say, was fully paid up, and as to the donation what was the amount of that?
A. I don't recollect; it was a very few shares.
Q. How long did you stay director for the road, Mr. Kelly, from 1870?

Witness refers to contract.

A. I resigned in July, 1870.

Q. You went in in April and resigned in July?

A. I did.

Q. I want to ask you one more question about the stock, Mr. Kelly. You say you paid it up in full?

A. I say that my impression is that I paid it. I don't swear that I have or have not.

Q. Did you pay it in money?

A. My impression is that I did.

Q. You were then the vice-president and director of the company for about three months in 1870, were you?—and then you resigned July 10th, 1870, as vice-president and director?

A. I did.

Q. Did you, then, after 1870, in July, cease to have any further connection with the company?

A. Only such as was called for by my three contracts with the company.

Q. You had no other relation with the company, except such as was called for by your three contracts?

A. That is all.

Q. Now, Mr. Kelly, when did you begin to build this road under your contracts?

A. In 1870.

Q. Immediately after you took your contracts you began to build?

A. Yes.

Q. How soon did you build the first five miles?

A. I cannot now state.

Q. How soon did you build the first ten miles?

A. That I am unable to state.

Q. When did you begin to run any trains or cars upon any completed portions of the road?

A. In the fall of 1871.

Q. You did not build any road, then, in the summer of 1871?

A. Yes.

Q. You did not build any road, then, in the summer of 1871?

A. Yes; we graded, I think, some 20 or 25 miles.

Q. But did not get it ironed?

A. Did not get it ironed until 1871; graded and got out the ties; got out the right of way, and built some bridges.

Q. Well, now, just as soon as you began to run any cars on the road that, I understand you, was in 1871?

A. Yes, sir.

Q. Who, at that time, was in charge of the operation of the road—that is, for instance, made freight contracts, or directed freight rates on the road? Who was in charge of that matter?

A. E. J. Shaylor.

Q. You had nothing whatever to do with that?

A. Except as called for by my contract.

Q. Well, how do your contracts call for?

A. Shall I read the contracts?

Q. Yes, sir. Please read the clause in the contract that refers to the operation of the road.

142 A. "That the said party of the first part, in consideration of the covenants, promises, and agreements hereinafter contained"—this is in the contract of July 23d, 1870—"on the part of the said party of the second part, doth covenant, promise, and agree to engage in the service of the party of the second part, as its general agent and manager, for all and singular the purposes hereinafter set forth." Whatever I did in regard to the operation of the road was done under the clause of the first contract.

Q. You followed that clause, did you?

A. I did so, to the best of my ability.

Q. Yes; you were then, under your contracts, in general charge, management, and operation of the road as soon as there was any road? Is that the fact?

A. I was in charge, so far as this contract provides.

Q. Is that the fact? Please answer my question. Please answer the question if you were general manager under your contract, or any other way in charge of the management and operation of the road?

A. I was performing the duties of agent, or as general manager of that road, under that provision of the contract, subject, of course, to the dictation of others.

Q. Now, Mr. Kelly, how often were directors' meetings held in this road between the date of April, 1870, and the ensuing fall?

A. I think there were several meetings. I cannot state the number.

Q. Did you ever attend any of those directors' meetings?

A. Not usually.

Q. Did you ever?

A. Whenever anything was brought up in relation to my contracts I think I was present.

Q. Well, how many, in round numbers, of those meetings did you attend? Did you attend half of them, do you think?

A. No.

Q. A quarter of them?

A. I might have attended a quarter of them.

Q. Well. Now we will put the same question as regards the time between the fall of 1871 and the fall of 1872. Were you generally present at the directors' meetings between those dates?

A. Not usually.

Q. Were you ever?

A. Yes.

Q. Were you present at a quarter of them?

A. I think not.

Q. Well, were you present at a fifth of them?

A. I think very likely I might have been present at a fifth of them—whenever anything came up which required an explanation of me.

Q. Now, with reference to this contract that was made, you say that you operated this road under a contract and had charge of it as general manager under a provision of the contract?

A. I stated—you don't state exactly right, Mr. Larned. I stated that, under the provision of this contract, I had charge of the operation of the road to that extent, subject to the dictation of others who were also interested in the road.

Q. Who were the others, Mr. Kelly?

A. The others were, of course, the directors and Henry Ketchum, president.

Q. Henry Ketchum was president during that time?

A. Yes.

143 Q. Was Hiles a director?

A. He was not.

Q. Were you subject to the dictation of Ketchum in the matter then?

A. Yes, sir.

Q. Any other party?

A. Yes, sir.

Q. Well, what other?

A. I was subject to the dictation of the parties who had purchased the bonds of the road and who resided in New York.

Q. Were they directors at that time?

A. They were not.

Q. How came they to dictate to you?

A. Simply because they were furnishing the money, and I deemed it proper to advise with them.

Q. Then manage the road according to their advice?

A. Yes, sir.

Q. How did the directors like that?

A. The directors were willing to carry out the wishes of the Eastern parties.

Q. Then you obtained the wishes of the Eastern parties?

A. The Eastern parties were not consulted in regard to the minute details.

Q. Well, what were they consulted in regard to?

A. Anything of any great importance.

Q. The minute details you managed yourselves?

A. Managed by the co-operation of the directors of the road and the president.

Q. But in matters of importance you say the Eastern parties would tell you what they wanted done?

A. I say in some matters of importance.

Q. In a number?

A. Yes, sir.

Q. Will you name, Mr. Kelly, if you please, any matter which you consider of importance which was so directed upon the board of trustees by the Eastern parties through you?

A. Well, the location of the road was decided upon by the parties at the East.

Q. That is all spread upon the records there, is it?

A. A portion of the location of the road; I don't know whether it is on the records or not; my impression is that it is not.

Q. Then the directors of this road did not locate it, but you located it after consulting with the Eastern parties? Is that it?

A. No; the Eastern parties, in some instances, expressed a desire as to some portions of the location of the road.

Q. What parts?

A. Well, for instance, John I. Blair came out and located the road from Merrillon to the Mississippi river; came over the line of the road which we had thought was the best and approved of it, and that location was made.

Q. Who made the location from Merrillon eastward to Green Bay?

A. That was made by the engineer of the company and the officers of the company.

Q. Did you have anything to do with it?

A. Yes, sir.

Q. Now, is it not a matter of fact, Mr. Kelly, that you selected that route and then submitted it to those directors and they agreed with you about it?

A. That line had been surveyed out before I became connected with the company.

144 Q. Exactly the same location?

A. Well, there had been a variation of lines here and there, but the general direction of the lines was determined upon before I became director of the company.

Q. Did you fully approve of what the directors had done in the way of location?

A. No, sir.

Q. You made some changes?

A. Yes, sir.

Q. And they agreed to all your changes?

A. I made some changes after consultation with some of the Eastern bondholders.

Q. And the directors agreed with them?

A. They did act as agreed upon by the Eastern bondholders and myself.

Q. You say, Mr. Kelly, about the same time, or perhaps a little later—you gave the date—you was made an agent of this company with pretty general powers under power of attorney?

A. I havn't said so.

Q. You said in your direct examination you read the power of attorney making you general manager.

A. I did not make the statement, however, which you put into my mouth.

Q. Now, you were made by that power of attorney an agent of the company for certain purposes, were you not?

A. I presume that will be the legal construction of the power of attorney.

Q. Did you act under your power of attorney?

A. To a certain extent, I did.

Q. You sold bonds under it, did you not?

A. Yes, sir.

Q. Didn't you have in your possession as such agent, Mr. Kelly, almost every single bond that was issued by this company?

A. This contract fully sets out——

Q. I want you to answer my question. Did not you have under your control at the time that power of attorney was given you, or soon afterwards—as soon as they were issued, all the bonds of the company?

A. I had under my control at one time and subject to the conditions of contract and that power of attorney all the bonds of the railroad company.

Q. And didn't you go to New York and sell those bonds?

A. The negotiation extended over a period of two or three years, during which I made several trips to New York.

Q. But you did sell some in New York?

A. Yes.

Q. And you got iron for them?

A. Only a very small portion.

Q. Well, you got money for the rest?

A. I received iron and money for the bonds; a small portion of iron.

Q. Now, you tried to sell them in Europe, didn't you?

A. I did.

Q. And you sent Garsia over to sell them for you in Europe?

A. I substituted him as my attorney.

Q. Well, you don't answer my question directly, Mr. Kelly. Now, I asked a simple question. Did you or did you not send Garsia to Europe, no matter in what capacity, for the purpose of selling bonds of the Green Bay road?

145 A. Under my power of attorney from the company I did send Garsia abroad.

Q. Now, did you or did you not, when you sent him, telegraph him that you had sold bonds here, and that he might discontinue the sale there?

A. Not exactly.

Q. Well, substantially, then?

A. I telegraphed him not to make any contracts whatever until he had received my letter of that date; then I wrote to him the same date stating that I had sold a portion of the bonds in New York.

Q. Did you see the records of the Green Bay road—of its meetings of the directors—when you were not present at those meetings?

A. I think probably I did.

Q. Well, now, is it not a fact, Mr. Kelly, that you did, every one of them?

A. Well, I have no doubt that I saw them subsequently, but I cannot say I saw them immediately.

Q. Now, is it not a fact, Mr. Kelly, that while you were acting under this contract, as you say, you prepared a number of resolutions and had them introduced into the board of directors and passed?

A. No, sir.

Q. You never prepared one?

A. No, sir.

Q. You never caused one to be prepared?

A. Most of the resolutions were prepared by the attorneys of the company.

Q. Did you never indicate to the attorneys what resolutions you wanted passed?

A. In some instances.

Q. In how many instances?

A. Half a dozen.

Q. In every instance where you wanted a resolution passed did you not indicate it to the officer and have it done?

A. I think not; it was customary for the directors to have the resolution prepared by the attorneys of the company before the meeting.

Q. Who were those attorneys?

A. W. H. Norris and T. B. Chynoweth.

Q. Now, Mr. Kelly, tell me, as nearly as you can, how many resolutions you gave Norris and Chynoweth to prepare which were subsequently passed by the board?

A. I cannot state how many resolutions; there were a number that Norris and Chynoweth prepared at my suggestion; I cannot now say how many.

Q. Well, have you any idea at all?

A. Oh, there were several.

Q. So none of those resolutions which you have read here on your direct testimony were prepared by you?

A. Not that I know of.

Q. When you prepared a resolution of that kind didn't you write it out on a loose piece of paper roughly embodying your views and hand it over to them to be put in shape?

A. In some instances.

Q. Now, you say, Mr. Kelly, that it was customary for this company—for resolutions to be adopted in that way. Do you know whether it is customary, as a general thing, in railroad building for independent contractors of the road to introduce a resolution at the directors' meetings?

A. I am not aware that it is the custom.

Q. You had, however, no other experience in roads except this one, so your testimony would not be conclusive on that point?

A. I suppose it would be competent for me to say that I did not introduce a resolution while I was contractor.

146 Q. Now, you say, Mr. Kelly, while you were acting under this contract Mr. Ketchum was also acting in the matter of getting right of way. Is that a fact that he was right-of-way agent?

A. Mr. Ketchum was not the right-of-way agent in name, but, as a matter of fact, he attended principally to getting up the right of way, and also to obtaining local aid.

Q. He did attend to the right of way and local aid, did he?

A. He gave his time to those two departments.

Q. Well, did he alone do so?

A. Very little right of way was obtained without Mr. Ketchum being present.

Q. Didn't Mr. Abrams act as an agent for getting right of way?

A. I think before I became connected with the road Mr. Abrams had been acting in that capacity.

Q. Never after you became connected with it?

A. In very few instances.

Q. Didn't Mr. Van Buren Bromley?

A. I think about the time I became connected with the road.

Q. Did he act for a year?

A. Mr. Bromley may have been under a salary for a year, but very small portion of the year was engaged in work.

Q. Now, is there any other person besides Mr. Bromley who was under a salary as right-of-way agent?

A. I think not.

Q. How about Robinson; didn't he get any right of way?

A. I don't think he did.

Q. Didn't Merrill get any right of way?

A. Merrill in some instances later obtained some right of way—in some individual instances.

Q. Was he employed for that purpose?

A. Mr. Merrill was employed as general utility man.

Q. It is a new office to me.

A. Because you are not acquainted with railroad business.

Q. Will you please explain to me here an understanding of what a general utility man is?

A. I will explain to you to the best of my ability. Take Mr. Merrill, for instance; we paid him a salary of $50 or $60 a month; perhaps to-day he will be sent off to settle a cattle claim for killing somebody's ox or cow; perhaps the next day he will be sent to check up a station; perhaps the next day he was employed in the office assisting the treasurer, who might be driven with his work.

Q. He was a sort of maid of all work?

A. I have no objection to your calling it that.

Q. Then he did, in his all work, buy a little right of way?

A. Occasionally he was employed in getting up rights of way.

Q. That was L. G. Merrill?

A. No, sir; E. W. Merrill.

Q. Were there any other men employed in getting right of way?

A. I have testified, in my direct examination, that George Hiles, while performing his contracts for grading certain portions of the road, obtained for the company rights of way in perhaps two, three, or four instances in order to facilitate his work; he was forbidden in a number of instances to go on certain farms or tracts of land until rights of way were obtained.

Q. Did you get any rights of way yourself, Mr. Kelly?

147 A. In a very few instances I presume I did.

Q. While you were acting under this contract?

A. I think so.

Q. Didn't you consider that rather inconsistent with the terms of the contract?

A. I considered, under my contract, that I was bound to do anything that was necessary to finish the road.

Q. And run it and manage it?

A. In some instances I did purchase for the company rights of way.

Q. Well, return to this contract one moment, Mr. Kelly. Didn't you go into the road with the express purpose of taking this contract?

A. I did not.

Q. When did the idea first occur to you?

A. Well, I think a very few days before the contract was made.

Q. Who suggested it to you?

A. I think it was an emanation of my own brain.

Q. You concluded, then, after you had been director for awhile, that you would make the most money in building the road?

A. No, sir; that was not it.

Q. Well, how was it?

A. I think I was induced to go into building that road by a feeling of patriotism—by a desire to build up that country and benefit Green Bay.

Q. That was your native home?

A. My adopted home.

Q. You said you came there in 1869, as I understood you?

A. No, sir; I became connected with the road first in 1869.

Q. When did you first come there?

A. I think I visited Green Bay in 1867.

Q. When did you adopt it as your home?

A. 1868.

Q. Well, you had been there two years?

A. Yes, sir.

Q. And in two years your Wisconsin patriotism was so enlarged as to induce you to take this contract?

A. Yes, sir.

Q. And you did not expect to make money out of it?

A. I thought I might make some money, but my idea then was——

Q. Now, didn't you think you would make a great deal of money out of it indirectly, Mr. Kelly?

A. No, sir; I did not.

Q. You didn't expect to make any money out of anything connected with the railroad, and you went into the building of the road simply to improve the condition of the northwest country?

A. You don't understand me; I stated that something of that kind was the chief ruling influence.

Q. You did not expect to lose any money?

A. But I also, as I said, expected to make some capital stock of the railroad under the contract.

Q. Did you ever, in fact, make any, Mr. Kelly?

A. Yes, sir.

Q. About how much stock do you now own, Mr. Kelly?

A. I own about 5,000 shares.

Q. About $500,000 worth of stock?

A. Yes, sir.

Q. Did you make that under this contract? Well, now, was not that something in addition to patriotic feeling?

A. It was not when I became connected with the company, but when I took the contract, as I said, it was an inducement—the hope to own and control some of the stock of the road.

Q. And so it turned out. How much right of way did the road own when you went out on it as contractor?

148 A. When I left the road as contractor?

Q. When you went onto it. You say some of it was graded—I think five miles—at that time.

A. I don't think the railroad at that time held a good title to more than two or three miles of right of way when I took my first contract.

Q. Not more than how much?

A. Not more than two or three miles.

Q. Well, when was the right of way mostly obtained, then; I suppose before you built the road?

A. It was obtained, a large portion of it, while the road was being constructed; some of it was taken afterwards.

Q. You said in your direct examination, I think, that about a quarter of the right of way was donated to the road?

A. I said that, in my judgment, that was about the portion of donation.

Q. Now, Mr. Kelly, while you were acting in the capacity of contractor and general manager—general agent—from December, 1871, to December, 1877, who was president of the road?

A. Mr. Ketchum was president the chief portion of the time; I cannot now say when he became president.

Q. Did you know Ketchum during all that time?

A. I did.

Q. Did you know him pretty well?

A. I knew him as one man must know another who is associated in the business of constructing railroads.

Q. When he was president he was out with you, was he not—out on the construction of the road—pretty near all the time?

A. No, sir.

Q. How much of the time was he, about?

A. Mr. Ketchum was engaged—the construction of the road commenced in 1867 and was completed in the fall of 1873. I think Mr. Ketchum gave nine-tenths of his time to the matters of the company, with the construction and operation of the road.

Q. He was out where you were building and constructing the road?

A. Occasionally with me on the road. He was in one portion of the road and I at the other.

Q. You were engaged in one general business?

A. No, sir; we were not.

Q. I understand the official position perfectly; what I want to know is this—whether your interests and Mr. Ketchum's were not identical?

A. They were not.

Q. Well, what difference was there?

A. Mr. Ketchum was president of the company; I was contractor with that company.

Q. Were not you both trying to get the road built?

A. I presume so.

Q. Was not that the object you both had in view at that time?

A. That was my object; I cannot say what Mr. Ketchum's object was.

Q. Then my first question might just as well have been answered in the affirmative. Didn't you perform, in addition to the duties called for by your contract of construction, the duties generally performed by the superintendent and general manager of the railroad?

A. Under the contract with the railroad company, dated February 12th, 1872, it was provided, among other things, that I should engage in the service of said party of the second part (meaning the railway company), for all and singular the purposes hereinafter set forth, as its chief officer and construction agent, and to perform during the continuance of this agreement the duties usually performed by a superintendent or general manager of a railroad company.

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Q. Exactly; that is sufficient. Now, Mr. Kelly, did not you get paid for that?

A. Except only as I was paid under the general provisions of the contract.

Q. Did not you get a salary?

A. I received a compensation of $5,000 a year and certain capital stock of the company.

Q. Exactly. Who paid you that?

A. It was paid to me by the railroad company.

Q. Now, does your experience with railroads tell you whether it is usual for contractors to be on the salary list of the railway company?

A. I have known of cases where a certain amount of profit was guaranteed to the contractor.

Q. Will you please tell me, in answer to my question that I put, whether your experience as a railroad man furnishes you with a single instance where a mere naked contractor of the road has been on its salary list at so much a year as one of its officers?

A. I do not now recall an instance of that kind as stated by you.

Q. What connection had Mr. Hiles with this road?

A. As contractor.

Q. Under you?

A. Yes, sir.

Q. Subcontractor?

A. Yes, sir.

Q. What did he contract for?

A. He contracted for grading the portion between Grand Rapids and Dexterville, and was interested with another in a contract beyond Dexterville for grading.

Q. Anything but grading?

A. I think he had a tie contract.
Q. Who paid him?
A. He was paid from the treasury of the company.
Q. Did not you pay him?
A. No, sir.
Q. Then you did not contract to build this road entirely?
A. Yes, sir.
Q. Why did not you pay Mr. Hiles?
A. Because my contract provided that all disbursements should be made through the treasury of the company.
Q. Then he was paid on your vouchers?
A. I approved the vouchers on which he was paid.
Q. Was the amount paid him deducted from your contract?
A. That could not have been, Mr. Larned, for this reason: That my compensation was a fixed sum each year and a certain amount of stock, and of course his compensation could not have been deducted from that.
Q. What was the compensation given you for? Was not it for building the road?
A. Yes, sir.
Q. Then was not you bound to build the road?
A. I was bound to build a road under my contracts.
Q. Does not that require you to build a road?
A. In that sense you cannot——
Q. Then your contract did not include grading?
A. It did.
150 Q. Why did you not pay for it, then?
A. Because the contract expressly provides that out of the proceeds of the local aid and mortgage bonds the road shall be built, and all disbursements shall be made through the treasury of the company. The money they paid Mr. Hiles came from either the sale of local bonds or the negotiation of the mortgage bonds, and the disbursements under my contract were made to me by the treasurer.
Q. To whom did those local aid bonds belong?
A. They were given to me by the company, with the understanding that I was to use the proceeds to pay for the construction of the road.
Q. In your accounts with the company did you put that on the credits you received for municipal and local aid?
A. Certainly.
Q. And you paid Mr. Hiles out of that?
A. Mr. Hiles received his moneys out of the proceeds of the negotiation of certain bonds.
Q. What bonds?
A. Well, the mortgage bonds. I cannot tell what particular bonds Mr. Hiles may have been paid from.
Q. And yet the amount does not appear in your accounts?
A. No.
Q. Well, then, did you not credit it as much as you got of the local aid in your accounts?
A. Certainly.

Q. And yet he was paid out of it?

A. Certainly.

Q. And yet his amount paid does not appear in your accounts?

A. I don't think you understand at all the situation. From the report from which I have read it appears that under my contract of 1872 all the proceeds of local bonds and mortgage bonds were to be paid to the treasurer and were to be used in paying for construction items, and disbursements were to be made through the treasurer of the company. Now, then, when Mr. Hiles was entitled to $5,000 or $10,000 under the contract of the company the treasurer of the company paid it out of the proceeds of the local bonds or the mortgage bonds.

Q. Then you did not receive, as you said a moment ago, the whole proceeds of the municipal aid?

A. I received the whole proceeds and turned it over to the treasurer.

Q. You turned it over to the treasurer—you did not keep any of it?

A. No, sir.

Q. Then your contract did not provide that that should be part of your compensation?

A. It did not.

Q. Then your contract did not require that you should build the road?

A. Well, I understand otherwise, but your legal construction may be the right one, possibly.

Q. The portion that Hiles built, for which the company paid him—is that so?

A. Mr. Hiles graded a portion of the road and furnished some ties, for which he was paid from the treasury of the company.

Q. Well, whose was the money that paid him?

A. I think it was the company's money. I think that would be the construction of my contract.

Q. It was not your money that paid him?

A. Not unless I was entitled to the proceeds of the mortgage bonds and local aid bonds, and I think I was not.

Q. Do you know how much money was paid Mr. Hiles by the company?

151 A. I could not tell how much Mr. Hiles' contracts footed up; the papers are in the hands of the company.

Q. Who made his contracts?

A. They were made principally by myself, I think.

Q. They were made between you and him?

A. No; I think the contract was signed by the president. Possibly by myself. I don't now recollect.

Q. You made the contracts and had the president sign them?

A. It may be that they were signed by the company. I cannot now state.

Q. Can you turn to any place in that record book where there is any resolution authorizing any contract with Hiles for grading?

A. I cannot now turn to any resolution of that kind. Whether there may have been I cannot tell.

Q. You don't know for a fact that there is no such resolution there?

A. I don't. My knowledge is not very certain either way.

Q. Now, you drew up the contract, you say, between Mr. Hiles and the company, and it was subsequently signed by Hiles, or Ketchum, as president?

A. I did not say so; I said that the contract between—the contract for grading done by Mr. Hiles was negotiated by me—that is, I had talks with Mr. Hiles in regard to it.

Q. Well, the difference between you and me is that you say it was negotiated by yourself and I say it was drawn up by yourself. That is no matter. I mean you managed or arranged or negotiated that contract between Hiles and the company.

A. I did so; but by whom the contract was drawn or by whom it was signed I cannot now state.

Q. And you don't know the amount of it?

A. I don't. I recollect that Hiles received $13,000 or $14,000 in capital stock of the company at par as one portion of his compensation, but how much money he received I cannot now state.

Q. How much grading did Mr. Hiles do?

A. I think that Mr. Hiles was interested in perhaps fifty miles of grading; interested individually and as a partner with a Steven's Point man whose name I have now forgotten.

Q. About fifty miles?

A. I think so.

Q. How much grading did Mr. Harriman do?

A. I think Harriman and Fetherly graded to the Wolf river, which would be thirty-five or thirty-six miles.

Q. That would be thirty-five miles between those two; and there were five miles graded when you went there. Were Harriman & Co. paid the same way that Hiles was paid?

A. Harriman & Co. were paid. Mr. Klaus was president at the time of their contracts, and they were paid through the treasury of the company.

Q. I don't care whom they were paid through. I want to know whose money it was that paid them.

A. Brown county voted $150,000 local aid bonds.

Q. That is the county in which Green Bay is?

A. There were $100,000 or $150,000, I am not certain, and I arranged in New York for the negotiation of those bonds in
152 advance of their receipt for a $100,000 as received, and I drew for the money as it was needed from time to time on the Harriman and Fetherly contract.

Q. You paid Harriman, then?

A. No; I did not.

Q. What do you mean by drawing for the money?

A. Well, I drew the money myself, and it went into the account of the company, and Harriman might have been paid one or two monthly payments while I was in Green Bay.

Q. How much were they paid by the company, do you recollect? Was it $100,000?

A. $50,000; I think it was in the vicinity of $50,000, all told.

Q. Out of the company's money?

A. Out of the money realized from those bonds.

Q. Do you recollect whether or not there is any resolution on the record book of the company authorizing the making of a contract with Harriman & Co. for grading?

A. I cannot tell whether there is a contract of that kind or not. I think that contract was made before I became a contractor. I think so.

Q. Now, Mr. Kelly, you say that under three contracts, which you have introduced in evidence, you contracted to build a railroad from Green Bay or Fort Howard to the Mississippi river, upon certain compensation therein named. Was there any compensation agreed upon between you and the officers of this railroad company excepting as named in those contracts?

A. I think not.

Q. You have stated in your direct examination that there is no place along the line of the road after you get out of Green Bay where, in any town, more than three to five acres is necessary for depot grounds and purposes of the railroad? Are you as sure of that as of anything else you have sworn to, Mr. Kelly?

A. That was the fact up to the time I left the road in 1877; and, in my judgment, it is true since after 1877.

Q. Well, don't you know as a matter of fact that occasionally warehouses are built in the region of depots on roads which handle grain?

A. I know that is sometimes done.

Q. Well, now, how much ground do you suppose it would take for depot grounds and proper warehouse room and proper facilities for shippers, at a station where grain was handled?

A. That would depend very much on the location of the track—location of the side track—and upon the location of the buildings.

Q. Might it not take ten acres?

A. No, sir; there are places where ten acres might be used for that purpose, but not absolutely necessary.

Q. What has the company been using this Sechlar land for; do you know?

A. My impression is that a portion of the side track is on that land.

Q. Do you know how much land is taken up and that is used there?

A. When I left the road there was not over a quarter of an acre used, in addition to the right of way occupied by the side track.

Q. I mean how much altogether, including the side track, warehouses, and depot grounds?

A. There are no depot grounds there, as I recollect. It is merely a switch.

Q. Well, do you know how much ground altogether is used there?

153 A. Not over 5 acres.

Q. Do you know the location of the depot in the town of Arcadia?

A. I know where it is.

Q. Is there any building near it?

A. I think the nearest building is a brick block in the rear of it.

Q. How near the depot does that building stand?

A. Oh, I suppose that might be within—I should think it might be within 125 feet of the depot.

Q. Is there no brick building between that and the depot? Where is the hotel located?

A. The hotel is located, I think, right in front of that brick building, on the street.

Q. Is it not a fact that the hotel backs up against the depot?

A. It was not when I left the road.

Q. You don't know about it?

A. Since I left the road, in 1877, I have not examined the road.

Q. Now, Mr. Kelly, you look at this deed from Frederick Meuhl that has been introduced here. This is a deed from Frederick Meuhl to David M. Kelly. The consideration seems to be one dollar and other valuable considerations. What were the other valuable considerations?

A. I cannot state what they were. The deed was not obtained by myself.

Q. This a deed from Frederick Meuhl and Dorothea Meuhl, his wife, of Outagamie county—another deed. This one is dated—referring the first one—filed for record on the 4th day of August, and this one—referring to the second one—the 2nd of January, 1877. The consideration here is simply one dollar, and no other considerations are noted. Do you know whether there were any other?

A. I presume that, generally, a portion of the consideration was the desire to assist me, as contractor, in the construction of that road.

Q. Have you any warrant for that assumption, Mr. Kelly?

A. I believe that was the representation made to all these parties.

Q. This party here that I have mentioned here, did he say so to you?

A. No.

Q. Here is a deed from Henry Robbins and Minnie, his wife, to David M. Kelly. The consideration named is $1—no other. What was the other consideration, Mr. Kelly?

A. Same answer as in the previous case.

Q. Here is a deed from Simeon W. Munger and wife and David M. Kelly. Consideration named on the deed is $1. What was the other considerations, if any, Mr. Kelly?

A. In that case I once had a conversation with Mr. Munger, in which he expressed a very strong desire to have the road built, and supposed that I would succeed in building it, and he expressed himself willing to do anything he could to help me along toward the completion of the road.

Q. And wanted the road completed?

A. Yes, sir.

Q. And for that reason was willing to give some land?

A. Yes, sir; and because he wanted to assist me in my undertaking.

Q. You fully explained to him, I suppose, that you had nothing to do with the completion of the road, except that you were a mere contractor? He understood that fully, did he.

154 A. I think he did. I think that was generally understood all through the country.

Q. You remember, in that conversation with Mr. Munger, of telling him those facts?

A. I remember of stating to him that I had a contract for building the road.

Q. You stated that in so many words?

A. Yes, sir.

Q. Where was that?

A. In Seymour.

Q. What date?

A. I cannot give the date.

Q. You don't know anything near the date?

A. I probably could not give within two or three months of it.

Q. What sort of a man is Munger?

A. So far as I know, a very square, upright man.

Q. Educated man?

A. A man of more than ordinary sense and judgment.

Q. What did he do for a living?

A. I think Mr. Munger is a farmer.

Q. Had he anything to do with railroad people?

A. I don't know.

Q. Don't you know, as a matter of fact, that Mr. Munger believed that you were the president of that road or its general manager?

A. No, sir; I have no idea that he believed anything of the kind.

Q. Are you sure that he did not?

A. I am sure.

Q. Didn't you tell him that you could locate the road on his land?

A. No, sir.

Q. Didn't you offer to build the road on his land if he gave you that deed?

A. No, sir.

Q. Why did he give the deed, then?

A. I presume, for the reason that I have stated, that he was desirous of assisting me in completing that road.

Q. Even if he didn't come anywhere near his property?

A. But he knew just about where we were coming.

Q. And you told him the road would be built on that line?

A. Yes, sir.

Q. And he said in consideration of its coming on that line he would give you the deed?

A. No, sir.

Q. Why did he gave you the deed?

A. I cannot state unless my previous answer has stated.

Q. You did not pay him anything for it?

A. No; I think not.

Q. You must have some consideration?

A. I have stated the consideration.

Q. The consideration was—you have stated that he wanted the road?

A. Yes; and something else. I also stated that he wanted to assist me in completing my contract.

Q. That was simply subordinate to his wanting the road?

A. No; I think not.

Q. It was not a matter of friendship?

A. Not specially, I presume.

Q. It was simply a business transaction, was it not?

A. I cannot state as to that; I don't know.

Q. Well, he didn't give it to you as a Christmas present; he gave it to you simply because he wanted to get a road there?

A. I don't understand it so.

155 Q. Here is a deed from Marquis Wood and wife to David M. Kelly; consideration, $1. What other consideration was there, Mr. Kelly?

A. I have stated in my direct examination that I had one or two interviews with Dr. Wood. He came in to see me at my office at one time and spoke about his desire of getting the county-seat at Manawa; also of his desire of having the town platted at Manawa.

Q. What do you mean — platting the town? You spoke of that several times in your examination.

A. Well, I mean the laying out by an engineer of lots and streets constituting a town plat. It is afterwards duly recorded.

Q. Well, you said in your direct examination that Dr. Wood wanted your assistance to plat a town. Now, will you please explain to me why Dr. Wood could not plat his town himself if he wanted to?

A. Dr. Wood may, perhaps, have not had the money sufficient; he may not have had the mechanical skill necessary to dictate the laying out of a town; he might have thought that a town laid out by me, perhaps, would be more likely to attract purchasers. The consideration that Dr. Wood mentioned to me, as I before stated, was first, that I should assist him in getting the county-seat at Manawa.

Q. Please tell me how that is.

A. Well, I presume he desired my influence.

Q. Where?

A. Well, I think very likely in the campaign?

Q. In the campaign?

A. In the campaign, certainly.

Q. What, political?

A. Campaign for the change of the location of the county-seat.

Q. That is a political matter, is not it?

A. No, sir; it is not.

Q. What sort of a matter is it?

A. Well, I perhaps am not any more familiar with the laws of Wisconsin in that respect than you are, but under the laws of Wisconsin by the signing of a petition by a certain number of residents of the county a vote can be had.

Q. Petition to whom?

A. Petition, I think, to the authorities, who call a meeting. I

think, of the supervisors. By a petition of a certain number of inhabitants had in a certain way to the county supervisors a meeting can be called at which the residents of the county vote for a change or no change of the county-seat.

Q. He wanted your influence in getting up such a petition?

A. No; he wanted me to assist generally to change the county-seat.

Q. I suppose you could sign the petition, could you not?

A. No, sir.

Q. Did you know many residents of the county?

A. Yes, sir.

Q. Then you could talk to them and ask them to sign it?

A. I suppose I could have done that.

Q. Was that the consideration?

A. Dr. Wood didn't so state. As I said, Dr. Wood said to me, in general terms, that he desired me to assist him in getting the county-seat changed to Manawa. He didn't state in detail why, or want me to circulate a petition, or whether he wanted my influence at the town meeting, or whether he wanted some money from me to help him canvass the county.

Q. He didn't say that?

A. He didn't state.

Q. Well, did you give him any money?

A. No, sir.

Q. Did you go and circulate a petition?

A. No, sir.

156 Q. Did you go to a town meeting?

A. I didn't. Dr. Wood said to me that when the time came he would like to have my assistance. He has never informed me that the time has arrived.

Q. He gave you the deed before he received the assistance?

A. Yes, sir.

Q. Didn't he say anything about having the railroad located there at the time that deed was given?

A. It was understood at that time that a road was to be located there.

Q. Here is a deed from G. A. Randall and wife, of Appleton, Wisconsin, and Thomas J. Burdick, and also A. Burdick, of Black Creek, Outagamie county, Wisconsin, and Dorr Clark, of the city of Green Bay, party of the first part, and D. M. Kelly, of the city of Green Bay, party of the second part, conveying considerable property; the consideration is the sum of one dollar. What was the other consideration for that, if anything, Mr. Kelly?

A. Well, I think probably that was a matter of personal friendship as much as anything—the consideration of that deed.

Q. Nothing said about a railroad there?

A. No, sir. Let me state to you that George A. Randall was the chief engineer of the railroad at that time.

Q. He was the chief engineer?

A. He was a personal friend of mine. He bought up a large tract of land and made me a present of that property.

Q. How did he induce Clark and Burdick——

A. He was the—Mr. Burdick was the party of whom Randall originally purchased the land, and he, Burdick, *he* owned an interest in that land.

Q. How much of this land is used for railroad purposes—this Randall land?

A. The right of way runs through a portion of it; how much I cannot tell, or whether the station is constructed on that same land I am unable to tell.

Q. There is one there, as a matter of fact, Mr. Kelly?

A. There is a station in that vicinity; whether it is on that land or not I cannot tell.

Q. Now, who located those stations?

A. Well, that is a difficult question to answer, because it was located by different influences.

Q. Didn't you have anything to do with it?

A. I had something to do with the location of stations.

Q. Now, Mr. Kelly, was there a single station located along the line of that road after you had charge of it without consulting you?

A. Yes, sir; I think there was.

Q. Well, what one?

A. I think most of the stations in Trempealeau Valley were located without consulting me.

Q. They were located without you having to say about it?

A. They were not located for me, but for the company.

Q. Before you built the road you knew where they were?

A. No, sir.

Q. You built the road without knowing where the stations were to be?

A. Yes, sir.

157 Q. Was that the case all the way through?

A. No, sir.

Q. How much—in what portion is that?

A. Trempealeau Valley is about 65 miles of road.

Q. You had nothing to do——

A. I say most of these stations were located without consulting me.

Q. Not all of them?

A. No, sir.

Q. Who platted the towns, Mr. Kelly—the one I referred to before here—the one that Marquis Wood was interested in?

A. I made that plat.

Q. Personally?

A. Through an engineer.

Q. What engineer?

A. I think I had three different engineers on that plat before it was finally settled.

Q. Did the engineer of the road have anything to do with it?

A. He had something to do with the road.

Q. That was Randall, was it?

A. Yes, sir.

Q. Now, here is this other deed from Sally Munger. I believe you said that was for an exchange or something of the kind?

A. There were two deeds from Sally Munger.

Q. They are not for different property, Mr. Kelly—I mean for different negotiations between you?

A. Yes, sir.

Q. But one was exchanged and the other was originally given you?

A. One deed was for the land called for in the original contract. The other deed was on account of an exchange which I made with Miss Munger, she desiring a certain strip of ground from me, and offering in exchange a certain piece of land somewhere else, and we made the exchange. I gave her a deed of the piece she desired.

Q. I havn't asked you about this; I asked you about S. Munger's deed. Here is a deed between Sally Munger, of Seymour, Outagamie county, Wis., and David M. Kelly, of Green Bay, party of the second part. It is dated the 20th of May, 1877; and here is another one between the same parties, dated the 1st of April, 1873. This earlier deed was, as I understand you, the one conveying property to you which you got in the first instance from Miss Munger?

A. I so understand it.

Q. The consideration named in that deed is one dollar. Was there any other consideration?

A. I had nothing to do with negotiating that matter with Miss Munger.

Q. I asked, was there any other consideration?

A. I think that Miss Munger understood that I had a contract for constructing that road, and she gave me that property for constructing that road.

Q. You had no negotiations with her at all?

A. No, sir.

Q. Didn't it strike you as a little strange—this getting of this property from a person you had never seen?

A. Not at all. The people through the country were very anxious to do all they could.

Q. Now, Mr. Kelly, don't you know as a matter of fact that each and every one of these deeds is given expressly on the idea that the road is to be located over the property?

A. No, sir; I do not know that.

Q. What is your best opinion about it, Mr, Kelly?

A. Well, I have no knowledge that any signer of one of those deeds signed it for that purpose.

Q. You evade my question. I simply want to ask you
158 whether it is not, in your best opinion, a matter of fact that every one of those parties that signed these deeds did so—partially at least; I don't say how much—for the consideration that the railroad should be located on or near that property?

A. I have already said that it is not.

Q. That is not the consideration?

A. No, sir.

Q. You will swear, then, that no one of these parties had, as a

part of the consideration of the conveyance to you of land, any idea or wish that a road should be located upon the land conveyed or near it?

A. I am perfectly aware that I am answering under oath, Mr. Larned, and I am also aware that I said no such thing, and I do not desire to say any such thing, because I don't know what was in the minds of the parties at the time they executed those deeds, but, to the best of my knowledge and belief, there was no such consideration operating upon their minds at the time.

Q. Mr. Kelly, here is a warranty deed from Ebenezer Thurston and wife to Kelly, Ketchum, and Hiles. Let us see what the consideration named there is. The sum of one dollar is the consideration named. Was there any other consideration?

A. Yes, sir.

Q. What was it?

A. That Henry Ketchum and myself should start a lumber yard in that town and endeavor to build up a place there and a business there.

Q. You agreed to do that?

A. We did.

Q. Did you do it?

A. We did.

Q. Was there any other consideration, Mr. Kelly? You say there was no other consideration for the Thurston deed except those you have mentioned.

A. I say I don't know of any other; there may have been, but I don't know of any.

Q. Now, was not it a matter of fact that part of the consideration was that Thurston and wife should have a pass from the railroad?

A. I never knew that there was any consideration of that kind promised.

Q. Do you know that there was not?

A. I don't; but my impression was that there was not. I am not certain.

Q. Is that one of the railroad passes (showing a pass to witness)?

A. That is unquestionably a pass; formerly a pass used by the railway company.

Q. Yes, sir. Is it a pass to Thurston and wife?

A. It is.

Q. The same man mentioned in this deed, is it not?

A. I presume it to be so.

Q. For what year is the pass?

A. It is a pass good during 1873.

Q. Yes; this deed is dated August 22d, 1873. Mr. Kelly, will you look and see if that is one of the passes of this road?

A. That is unquestionably one of the passes.

Q. To whom does it read?

A. Thurston and wife.

Q. That is one of the railroad passes, is it, Mr. Kelly?

A. Yes, sir.

Q. To whom is it given?

A. E. Thurston and wife.
Q. For what year is it for?
A. Good for the year 1874.

(Passes here offered in evidence and marked Exhibit —.)

Q. Who made the arrangement—Mr. Ketchum, Mr. Kelly?
A. By Mr. Ketchum.
159 Q. Then you don't know whether Mr. Ketchum presented Thurston a pass on account of the deed?
A. That I don't know, if that was a consideration or not, but I presume not.
Q. Is that your signature, Mr. Kelly?
A. That is my signature, sir.
Q. Look at the letter above it and see if you wrote it—not inside, but only on the back.
A. That is my writing.
Q. The letter reads as follows on the inside—the letter to which this is an answer. Will you please look at it and see if that is the letter in answer on the back?
A. That is undoubtedly the letter which I answered on the back.

The letter is received in evidence and marked Exhibit "F."
The letter reads as follows:

(EXHIBIT "F.")

WHITEHALL, WISCONSIN, *Jan. 7th*, 1879.

D. M. Kelly.

DEAR SIR: E. Thurston, of the town of Preston, made a deed to Kelly, Ketchum, and Hiles of forty acres of land. The agreement made at the time and the consideration was that Thurston should receive a life pass over the Green Bay & Minnesota railroad for himself and wife. Only two short passes have been furnished him. He desires to inquire whether you intend to see that he has a pass.

Respectfully, ALLAN QUITHAMS.

(The last question is objected to as incompetent, immaterial, irrelevant, and as hearsay statement of third parties.)

DEFENDANTS' COUNSEL: I have already shown by this witness that the letter written upon the back of this letter which I have read is in the handwriting of the witness.

I now offer the letter which I have read and the letter upon the back of that signed by the witness in evidence.

(The offering of the letter is objected to as incompetent and immaterial, and especially because the letter is written by a third party and not by the individuals for whom it is claimed that the pass should have been given.)

DEFENDANTS' COUNSEL: I will now read the letter of Mr. Kelly's upon the back.

(EXHIBIT "H.")

GENTLEMEN: Mr. Ketchum made the arrangement, whatever it was, but, if I remember correctly, he told me at one time that it was not true that a life pass was promised in this case. I must refer you to Mr. K.

Very truly yours, D. M. KELLY.

The letter is offered in evidence and marked Exhibit "H."

Q. Do you know Mr. O. J. Allen, attorney and counsellor at law and collecting agent?

A. I think I do not.

Q. Did you ever hear of him?

A. There is an attorney by the name of Allen at Independence, Wis. If that is Mr. Allen—if the Independence Allen is not O. J. Allen then I don't know O. J. My impression is that I never met O. J. Allen.

Q. Now, Mr. Kelly, there is a warranty deed from Duke Porter to David M. Kelly, Ketchum, and Hiles, dated the 22d of August, 1873. The consideration named in the deed is $1. What were the other considerations, if any?

160 A. I have no personal knowledge in regard to that matter.

Q. There is a deed from Leander G. Merrill and wife and Benjamin H. Merrill and wife to David M. Kelly, under date of July 20th, 1877. Did you say that that deed—you stated in your direct evidence, I think, that that deed was given in fulfillment of a previous contract?

A. It was.

Q. Was there any additional consideration given for the contract offered by the counsel for the defense?

A. The deed and contract were parts of the same arrangement.

Q. The same consideration, then, would apply to the contract that applies to the deed?

A. Yes; there is no different consideration for the deed than for the contract.

Q. Does it convey the same land that the contract calls for?

A. I so understand it.

Q. On your direct examination you stated that when this matter came to be settled up there were a great many matters which you alluded to which entered into the negotiation between Merrill and yourself beside the matter of the original contract. Is that so?

A. I don't know as I comprehend the question. There was no other consideration for the deeds which were given on the final settlement than for the contracts by virtue of which those deeds were made.

Q. I understood you in your direct examination to say that there was a large subscription of stock that entered into this matter?

A. I stated that L. G. Merrill agreed to subscribe $50,000 to the capital stock of the company and give the company a certain right of way for the purpose of having the road located at a certain point.

Q. Was the contract with you for a deed made at the same time with the other one?

A. One contract was, and one was made later.

Q. What was the difference between the one that was made at the same time and the one made later?

A. Well, the contract made at the same time with the railroad contract provides for the deeding to me of 40 acres of land and certain interests at Mormon Riffle. The latter contract with me provided for the deeding to me of a certain long strip of land in Merrillon.

Q. Now, what was the consideration for the contract to deed land to you?

A. I stated that in my direct examination, but I can repeat it if necessary.

Q. No; don't mix it up with the railroad one. What was the consideration for the contract to you?

A. I understand what you mean. Mr. Merrill was very anxious to have a town located and built up at Merrillon, near his property. He was also desirous of obtaining the stopping of the West Wisconsin trains at his town in Merrillon, and desired my co-operation in the matter.

Q. Were you a member of the West Wisconsin road?

A. No, sir.

Q. Had you any influence with that road?

A. Some.

Q. How?

A. I was on personal friendly terms with the general manager of the road.

161 Q. Now, didn't you have influence with that road because you could connect this road with it?

A. No, sir.

Q. Ever made any arrangements—ever transferred any freight?

A. We transferred at Merrillon.

Q. Had you positive connections with them?

A. Yes, sir.

Q. It was entirely a personal influence?

A. It was in part personal.

Q. Had nothing to do with business? What was the other part?

A. I presume I might have had influence with them by my connection as contractor of the railroad.

Q. Now, Mr. Kelly, is not that rather an evasion on your part? What interest in the world had the Wisconsin road in you as a contractor?

A. The West Wisconsin officers knew that I was a contractor for the building of the Green Bay and Minnesota, and I presume they were desirous of having that road completed.

Q. Exactly. They wanted the road. Then, that was not a personal matter with you?

A. So far as my personal influence is concerned, I was on personal, friendly terms with at least one of the general managers of that road.

Q. Any questions ever arise between that road and the West Wisconsin that required settlement?

A. We had some questions.

Q. Did they ever ask any favors of the Green Bay road?

A. A good many.

Q. Now, Mr. Kelly, you stated in your direct examination that you were to have as further consideration for building this road, beside what was expressed in the contract, whatever land might be given to you. You stated to me a few moments ago, on your cross-examination, that you were to have no consideration except what was specified in your contracts. Now, which of those statements is correct?

A. Well, I don't think I stated as you state, Mr. Larned. I stated that I am not aware that I was to receive any compensation outside of the compensation provided under my contracts.

Q. Then you retract the statement you made in your direct examination?

A. I don't think I made anything that is contrary to that, Mr. Larned. If I did, I did it unwittingly.

Q. Then, those lands of which evidence has been introduced here which were given to you—donated to you by various parties—were not any part of your considerations for building the road?

A. Not under the contract.

Q. Were they in any other way?

A. It was understood by myself and the officers of the company that such tracts of land which I could get in that way were to be mine.

Q. What officers of the company?

A. Mr. Ketchum, the president, understood it; the engineer understood it.

Q. You please give the names of those parties.

A. Mr. Ketchum was president, George A. Randall was engineer, and J. T. Alton was engineer for a portion of the time; W. J. Abrams was secretary for a portion of the time; Fred. S. Ellis was secretary for a portion of the time.

Q. Now, you say that all these parties had an understanding with you that you were to have such lands as were donated to you or you could get donated to you as a part of the consideration for building the road?

162 A. I said that I thought that was the understanding among all the officers of the company.

Q. Did you have any written understanding of that kind?

A. I did not.

Q. Did you have any resolution authorizing any such thing?

A. I did not.

Q. Did you have any understanding with them, collectively, as officers of the road?

A. When you say collectively you mean, I presume, any meeting duly authorized. No.

Q. Was there any understanding except loose talk between you and these men at different times?

A. A general conversation and a general opinion was the extent of their understanding.

Q. Did Abrams know of the donation to you of the Munger land?

A. I think he was aware of it; yes, sir.

Q. Did he know of the donation to you of all the other pieces of land which have been alluded to here?

A. I am not aware that he was knowing to all the cases. I presume he was to most of them.

Q. Did he ever talk to you about it?

A. I don't recollect.

Q. Never spoke to him about it?

A. I don't remember.

Q. What makes you think he knew about it?

A. Because Abrams was up and down the line frequently and assisted in getting some of these contracts.

Q. That is a mere matter of inference on your part; mere supposition?

A. I think there are reasons for the supposition, but I don't know, as a matter of fact, that he knew of every case.

Q. Do you know, as a matter of fact, that he knew of any case?

A. Yes, sir; the Seymour cases.

Q. Those Munger cases?

A. I don't know.

Q. Give me one.

A. I think he knew about most of the Seymour cases.

Q. You think he knew. I want to know just exactly which one Abrams did know about. One of them—just name one.

A. I repeat that I cannot gratify your desire for a positive answer, Mr. Larned. I can only say that, while I think he knew all of them, I don't know for certain.

Q. Will you please state why you think he knew?

A. Because some of the contracts were in Abrams' handwriting.

Q. Can you state which?

A. I cannot.

Q. Have you them here?

A. No, sir; but I have seen some of those contracts in his handwriting.

Q. Was the Robinson case in Abrams' handwriting?

A. There was no case of that kind.

Q. Robbins' case, I mean?

A. I don't remember.

Q. Munger's?

A. I don't recollect.

Q. Meuhl?

A. I don't recollect. I would like to add here that some of the contracts which were in Abrams' handwriting were not in proper form and other contracts were obtained subsequently.

Q. Did Robinson know that you got those lands at Seymour?

A. I cannot say whether he did or did not.

163 Q. Did Somers know?

A. Mr. Somers was up and down the road occasionally. I presume he did, but I could not say that he did.

Q. How about Klaus?

A. I think Klaus knew, also.

Q. Did you ever tell him?

A. I don't think that I did.

Q. Then what you stated about the knowledge of all these officers is inference, is it, from the fact that they went up and down the road and you supposed that they must know?

A. Well, no, not entirely inference. I know that Abrams knew of some cases.

Q. Because of his handwriting in the contract?

A. Yes, sir, and because of his having obtained the contracts from the parties.

Q. And as to the other officers you cannot tell?

A. Ketchum also knew.

Q. As to the other officers it is mere inference?

A. No; Hancock, the treasurer, knew, because I talked it up with him.

Q. When.

A. After the contracts were taken.

Q. Four years after most of them were taken?

A. I didn't say four years or after—before I left the road.

Q. When did you talk with Hancock of this matter?

A. Well, I should think it was two years before I left the service of the road in 1877.

Q. At Green Bay?

A. Yes, sir.

Q. You told him then of all those deeds you had in your name?

A. No, sir.

Q. What did you tell him about?

A. Some contracts obtained in my name.

Q. Didn't tell him any of the names?

A. I don't think I mentioned any of the names.

Q. Why did you tell him about it?

A. We talked generally about the affairs of the company and my connection with the company; about the books, accounts, and papers of the company, and my account with the company.

Q. You said in your direct examination that you paid about $2,500 in your contract for the purchase of land?

A. No, sir; I didn't state that. I stated that I paid in cash, on account of the lands set forth in the bill of complaint, about $2,500, and that those lands cost myself and associate about $5,500.

Q. Yes, sir. Well, now, lands which are under consideration here, of which these deeds were put in evidence, no money was paid. Is that so?

A. In regard to those lands no money was paid.

Q. Well, there was no money paid in any deed that I have shown you. Is not that the fact?

A. Well, if the deeds shown me are the Seymour lands, and the Dr. Wood lands, and the Merrill lands, there was no money paid.

Q. Yes, exactly.

A. In regard to the Duke Porter lands I have said that I don't know anything personally about that matter.

Q. Mr. Kelly, you say that you have always intended to give the right of way and depot grounds, as soon as certain things were done, to the railroad. Is that so?

A. I didn't state it in just that way.

164 Q. Is that substantially what you said?

A. No, it is not substantially what I said. I stated that it had always been my intention to give the railroad company rights of way and depot grounds as far as they stood in my name.

Q. You say that you wrote a letter to Mr. Case, the receiver of this road, in which you offered to do that substantially, provided he would give you a bond of indemnity in certain cases?

A. That was a fact; yes, sir.

Q. Don't you know as a matter of fact, Mr. Kelly, that every one of those cases had been settled except in that Garsia case?

A. I don't. I know that is not the case.

Q. Which has not been?

A. You will let me see the list, please. I will tell you. The Anna Briggs case has not been settled by the company.

Q. What is that case?

A. I think it is for right of way. It may be for cattle killed, possibly.

Q. How much involved in it?

A. I could not say; something under $100, I think. I think now, looking at the list, I think the Lyon cases have not been settled.

Q. Lyon cases?

A. Lyon cases; yes, sir.

Q. Have you ever been called upon to pay any money in these cases, Mr. Kelly?

A. Yes, sir.

Q. Which one?

A. The Anna Briggs case.

Q. About how much did you have to pay there?

A. Something under $100; I have forgotten the sum.

Q. When did you pay that?

A. I guess about two years and a half ago now.

Q. Any other cases?

A. I have been called upon in the Esther J. Lyon cases.

Q. How much did you pay in this case?

A. I have not paid anything yet.

Q. Who wanted pay of you?

A. The attorneys of the Lyons did.

Q. Why did you not pay?

A. My impression is that I referred them to the railroad company and claimed that I should not pay until they had exhausted their remedy against the railroad company.

Q. You say you paid in the Briggs case. Did you pay them on demand?

A. I did not pay until after judgment was rendered against me.

Q. Where was the suit brought?

A. I don't remember the court—State of Wisconsin.

Q. Did you contest the suit?

A. I notified the railroad company of the suits, and their attorney had it in charge. I did not contest it personally.

Q. Did not judgment go against you by default there?

A. No, it was a judgment on the merits.

Q. Well, you put in an appeal then?

A. The company, as I understand, put in an appeal and then failed to prosecute.

Q. You mean the receiver of the company?

A. I don't think the receiver ever gave it any attention. I think it went by reason of his default. But the attorneys of the company, Norris & Chynoweth, attended to it until they were discharged.

165 Q. That was at the time the receiver was appointed?

A. They attended to it until the receiver was appointed.

Q. And something under a hundred dollars was all the money you had to pay on any of these claims, is it, Mr. Kelly?

A. That is all I have paid.

Q. How much has the Garsia suit been prosecuted? Has it gone to judgment in any court yet?

A. It has not.

Q. How long ago was it begun?

A. I should think—I think it was commenced in 1874.

Q. In 1874?

A. Yes, sir.

Q. In one of the courts of New York—New York city?

A. Yes, sir.

Q. Do you know why it has not gone to judgment?

A. Well, our attorneys have from time to time prevented it from being put on the trial list for one reason and another. I think the other side asked for one or two delays.

Q. It has been kept along?

A. Yes, sir.

Q. Common-law case?

A. I do not know.

Q. I mean whether it is a suit at law or equity? I don't know whether that is a proper question; I will withdraw it. As soon as you got through your contract, Mr. Kelly, for the building of this road, did you again take office in the road?

A. I was elected a director and vice-president in April, 1874, and general manager.

Q. Was that immediately after the completion of your contract?

A. It was not.

Q. How long after was it?

A. It was; the road was completed in December, 1873.

Q. And in what date—in 1874?

A. April, 1874.

Q. You stated in your direct examination, Mr. Kelly, that you

furnished Mr. Ketchum money to purchase lands of the State of Wisconsin. How much money did you give him?

A. I think we spent together a thousand dollars in purchasing lands of the State of Wisconsin.

Q. Was that money you had earned on your contract for building the road?

A. No, sir.

Q. Some of your private means outside?

A. Private means.

Q. Had you amassed then considerable means before you came onto this road?

A. I was worth considerable property at the time.

Q. Will you give me in round numbers?

A. If it is necessary I will answer that question, but I prefer not to.

Q. I don't like to ask, but I think it is.

A. Well, at the time I became connected with the road I was in receipt of forty-five hundred dollars' salary from two corporations that I was connected with as officer and partner, and my income aside from that was perhaps from six to ten thousand dollars a year. That had been the case for a number of years.

Q. The money furnished, then, to Ketchum was your own outside—your own income?

A. It was certainly a part of my private income.

Q. That was lands purchased of the State of Wisconsin? Were they near the railroad?

A. They were near the railroad, but some of them were not traversed by the road at all. The right of way did cross two or three tracks this side of Hatfield.

166 Q. Was the road located with reference to those lands?

A. I think it was.

Q. Was it built?

A. I could not say. My impression is that it was not.

Q. Were they timber lands?

A. Most of them; yes.

Q. How much did you pay an acre for those lands?

A. We paid Government price; I think it was two dollars and a half or three dollars; something like that.

Q. You furnished all the money?

A. No, sir.

Q. How much did Mr. Ketchum?

A. I think he furnished four hundred dollars out of the thousand. Mr. Hiles was interested in the same piece of land, I think.

Q. You bought five hundred acres, did you?

A. I should say of the Government land five or six hundred acres.

Q. You say that the land that was bought of Briggs was bought by Hiles and Ketchum and yourself for your private use?

A. That was the fact, as I understand it.

Q. What did you mean to use it for, Mr. Kelly?

A. Well, we intended to make town lots of it.

Q. Do you know whether any railroad warehouses stand on that property?

A. I think there are several warehouses on the station grounds at Arcadia.

Q. You think there are some?

A. I think there are some; I think there are several warehouses on the station ground.

Q. Did you ever speak with Mr. William E. Dodge with reference to town lots in Arcadia?

A. The only conversation I ever had with any Eastern man, to my recollection, in regard to the lands in Trempealeau county was John I. Blair. I did have some conversation with him about lands down in Trempealeau Valley.

Q. Didn't you tell William E. Dodge that when you had asked him about making a further loan of money, either individually or from some corporations in which he was interested, that the road would derive a large amount of money from the sale of its town lots?

A. I never told him so or any one else. As I said before, the only conversation I ever had in regard to lands in Trempealeau Valley in connection with the road was with John I. Blair.

Recess until 2 p. m.

Parties met pursuant to the adjournment and proceeded with the examination of Mr. D. M. Kelly.

Q. You stated in your direct examination, Mr. Kelly, that you had an interview with Mr. Case, the receiver of the road, with reference to the settlement of right of way owned by you, and that you demanded a bond of indemnity against certain suits, and offered to give a quitclaim deed of the right of way and depot grounds if said bond was given. You then said that Theodore Case asked a list of the suits and a statement of the lands you owned, and that you refused to describe the lands that you owned. Why did you refuse?

A. Mr. Case's son during the interview asked me to furnish them with a list of the lands along the line of the Green Bay &
167 Minnesota railroad which I owned. In connection with the conversation had during the interview regarding rights of way and station grounds I replied that there was no use of my giving them a list of the lands—of all the lands—which I owned, because I owned some lands which I did not propose either to sell or give to the railroad company, and that, so far as the rights of way and depot grounds were concerned, they already had a list of those lands.

Q. Is that a fact, that they had a list of those lands?

A. Mr. Case held the list in his hand. I spoke in regard to some of them. I presumed at the time that he had a full list.

Q. Did you know that he had a list of the lands whereon the right of way was due to the road?

A. I don't admit that any of the rights of way were due to the road, so that I cannot answer that question directly.

Q. You don't admit that it was due to the road that you should give the right of way across the land that you own?

A I don't admit it, sir.

Q. Well, do you know that he had a list of the lands owned by you over which the road passes?

A. Mr. Case said, in reply to what I have just testified to, that they had such a list, and that was all they wanted, and all they desired of me was a list of the suits in which I was bondsman, or in which I was in any manner held, and I told him I would furnish such a list. When I say Mr. Case I mean in this answer—I mean Timothy Case, receiver.

Q. At the time you had this conversation with the Mr. Case that you have referred to, in whose name did the lands at Arcadia stand?

A. They stood not in my name.

Q. Whose name did they stand in?

A. I presume in the name of George Hiles and Henry Ketchum, but they might have sold them, possibly.

Q. When did you deed your interest in that land to George Hiles and his nephew, Ketchum?

A. Witness refers to answer.

Q. In February, 1875; and when was this conversation with Mr. Case?

A. It was in 1878, prior to November 22nd.

Q. You said you had a settlement with Mr. Hiles; is that so?

A. I didn't have any settlement with Mr. Hiles; I have made a sale to him of certain interests.

Q. And he paid you several thousand dollars?

A. He did.

Q. That was for your interest in the Scranton Boom Company and Manufacturing Company, was not it, and the Dexterville Manufacturing and Boom Company also, was not it?

A. It was for my interest in the Dexterville Manufacturing and Boom Company, in the Scranton Manufacturing and Boom Company, in twelve to fourteen thousand acres of land, and my interest in lands at Taylor, Arcadia, and Blair.

Q. You said you were a judge of real estate in this part of Wisconsin. How much was the lands of the boom companies referred to worth per acre, in your judgment?

A. Well, I have reason to believe that they were worth, on the average, at the least three dollars an acre.

168 Q. How many acres were there?

A. Twelve to fourteen thousand.

Q. How much interest did you have in that boom company's land?

A. One-third interest; it is a third or a quarter—I don't remember; either a third or a quarter.

Q. 14,000 acres, worth how much an acre?

A. I should say $3 an acre.

Q. Worth about $42,000, and you had then a third interest in that, did you?

A. I had a third or a quarter, I cannot say which.

Q. What were these lands good for?
A. Well, good on account of the pine.
Q. Were you working them at the time?
A. We were not.
Q. Did you ever work them?
A. I don't think we ever logged on them.
Q. Why not?
A. Well, I guess the reason why — we were all of us too busy about other matters.
Q. Was not the reason really that the lands were not worth working?
A. No; that was not the reason.
Q. Have they ever been worked?
A. I don't think the pine has ever been cut from them.
Q. On what do you base your valuation of those lands?
A. From the sale of other lands in the same section of country and same nature.
Q. What sales?
A. Well, ordinarily, different sales being made from time to time. I know of different tracts having been sold.
Q. Do you know of any tract there of exactly the same kind of land as this that was sold for as much as $3 an acre?
A. I don't think there was another tract of the same kind in that country—of the same kind precisely.
Q. No, no; I don't mean such exact things as that.
A. I have known lands to be sold for five or ten dollars in that vicinity.
Q. Why did you sell one-third interest in that land, which was worth $42,000, for $7,000?
A. Because I had made up my mind that my forte was not to lumber, and that I might lose a large amount of money in remaining a stockholder in those two companies, and my judgment was that I had better accept Mr. Hiles' proposition and run no further risks in connection with those companies.
Q. You didn't think you could make much out of them, then?
A. I made up my mind that my position as a holder of a minority of the stock was not such as to incline me to continue in that business. I think, also, that I sold some of my interest in certain Government land, in which Mr. Hiles and myself were jointly interested. I think that was in Blair.
Q. You did not value your lands at Taylor, Blair, and Arcadia, then, as worth anything?
169 A. Yes, I considered them worth something, but I lotted the whole thing in together and sold for $7,000.
Q. You say you let Mr. Ketchum have some money wherewith to purchase right of way; is not that so?
A. I said, or intended to say, that Mr. Ketchum, in his capacity as acting right-of-way agent, contracted for portions of the right of way at different times, which I furnished the means to pay for.

PLAINTIFF'S COUNSEL: We had two resolutions here this morning

which we are not able to find, Judge Ellis, with the other papers—two resolutions in Mr. Kelly's handwriting. They were in Mr. Kelly's handwriting, and we had them here—the originals—this morning. They were with the rest of the papers, but we are not able to find them. We shall have, therefore, to introduce secondary evidence of them.

Q. Did you, then, let Mr. Ketchum have the money that is on your vouchers and your orders on the treasurer, in his capacity as right-of-way agent, to purchase the right of way?

A. I did.

Q. Do you know, as a matter of fact, whether that money was applied by Mr. Ketchum to the purchase of right of way?

A. I do.

Q. You know that it was so applied?

A. I do.

Q. Did you see the vouchers after that?

A. Mr. Ketchum returned the vouchers.

Q. You say that you had no connection with Hiles or Ketchum in business interests—you stated in your direct examination, as I understand you?

A. You are mistaken, sir; I didn't say anything of the kind.

Q. You had, then?

A. I have testified about the various tracts of land we have bought together.

Q. You never had any business association except that?

A. Yes, sir.

Q. What about?

A. Stock interest together in the Dexterville Manufacturing and Boom Company and the Scranton Manufacturing and Boom Company.

Q. Did you have any other interest in common with them?

A. I think not, except as I have testified.

Q. You were interested together in the lands at Arcadia, Taylor, and Blair, were you not?

A. Yes, sir.

Q. And in other lands here which have been conveyed to you three parties together?

A. I was interested with them in those lands.

Q. And you were working together, as you have already testified, I believe, in building this road, were you not?

A. I didn't testify to that in the language which you use. Mr. Ketchum was the president of the company, and I, being a contractor, of course came in contact with him.

Q. Mr. Hiles was also a contractor?

A. Mr. Hiles was also a contractor to the extent of perhaps fifty miles, and as a contractor he naturally came in contact with me. To that extent we were associated together in the construction of the road.

Q. Did you have any interests together outside, except what is connected with this road or its building, or lands along it?

A. Yes, sir.
Q. What other?
A. The land belonging to the Dexterville and Scranton Companies were mostly away from the line of the road.
170 Q. Any other interests that you had except those, outside of the road?
A. I don't now recollect of any.
Q. How many acres were there in which you three were interested, at Taylor, Blair, and Arcadia?
A. I think I said yesterday, in my direct examination, 500 acres; will now say 500 to 800 acres, at the three points.
Q. Was anything said to you by Mr. Merrill at the time you made this contract with him for land and when the deeds were given about this church property?
A. Nothing at all. The church was never built until some five or six years after the contract was made, and I hardly believe that Mr. Merrill dared to hope that there ever would be a Methodist church at Merrillon when he made that contract with me; but during that five or six years Merrillon increased in population, business, and piety, and it was necessary to have a Methodist church.
Q. How long after your resignation was it before this first contract was signed?
A. I think the contract was executed the same month.
Q. About three days later, was it not?
A. It was immediately after I resigned as director and vice-president that the contract was signed.
Q. Negotiations for the contract had been carried on before your resignation?
A. Something had been said in regard to my taking a contract with the company, but a draft had never been presented to the directors and was not presented to them until after my resignation had been received.
Q. How long was the draft in preparation?
A. In preparation?
Q. Yes.
A. I guess it was drafted in one evening.
Q. You remember when that was?
A. It was immediately at the time of my resignation—immediately before it was presented to the directors.
Q. Had there been any conversation with you before your resignation with reference to this contract?
A. I think there hadn't been.
Q. The whole negotiation, then, for this contract and the whole preparation of it was between July 21st and July 23d?
A. I cannot say that it was in July.
Q. Who drew up the contract?
A. I think William H. Norris. I may have made a rough draft of it myself, but he drew it.
Q. Mr. Kelly, did you ever draw on small slips of loose paper any resolutions which were subsequently handed by you to Mr. Abrams

or any other director and thereafter adopted by the board of directors of this road?

A. I testified this morning that I presumed that I have in several instances made rough drafts of the resolutions that were passed by the board of directors.

Q. Did you draft in that way the resolution approving your contract of 1872?

A. It is possible that I did so. I cannot testify definitely one way or the other. I presume I was interested in having a proper resolution passed which would bind the company.

Q. Did you hand that draft or resolution, when you had drawn it, to Mr. Abrams?

A. I may have done so. I cannot state positively.

171 Q. Did you in that same manner draw a resolution giving to Kinnad & Co., of New York, power to sell bonds for the road?

A. I may have done so.

Q. You don't remember?

A. I cannot state positively.

Q. Did you at various times draw sundry resolutions to be passed by the board of directors and hand them to Mr. Abrams, one of the directors, and ask that they should be passed?

A. I presume I did draft several resolutions and hand them to Mr. Abrams, with the request that he would present them to the board of directors for the consideration of the directors.

Q. When was this conversation that you spoke of with John I. Blair, with reference to the land and the location of the road in Trempealeau Valley?

A. In the spring of 1878.

Q. Where?

A. It is on the road to the Mississippi River from Merrillon.

Q. Where did you see Mr. Blair?

A. I saw Mr. Blair at Merrillon.

Q. What was he there for?

A. Mr. Blair came there for the purpose, as I understand it, of deciding two questions—first, whether the Green Bay & Minnesota (railroad) should be extended from Merrillon to the Mississippi river; and, second, if decided to do so, what route should be taken.

Q. How far is Merrillon from the Mississippi river?

A. Sixty-five miles.

Q. How far from Merrillon to Fort Howard?

A. One hundred and fifty miles.

Q. Was the road built to Merrillon at the time Mr. Blair was there?

A. It was.

Q. Was it graded at all beyond Merrillon at that time?

A. I think not.

Q. Located or surveyed beyond Merrillon at that time?

A. We had run two different lines from Merrillon to the Mississippi, and I had recommended to the bondholders in New York the adoption of one of the lines, and Mr. Blair, as I said before, came out to de-

termine the two questions, and went over the line which I recommended to the Mississippi river.

Q. Went all the way, did he, from Merrillon to the Mississippi?

A. He did.

Q. With you?

A. He did.

Q. Travel by wagon, or how did you go?

A. By wagon.

Q. Anybody else with you?

A. Mr. Ketchum was with us and Mr. Blair's brother.

Q. Which brother—Mr. James Blair?

A. I think he resides in the State of Illinois. He was living West, but I don't recollect his first name. I think the engineer, James T. Alton, went with us.

Redirect examination:

Q. Mr. Kelly, you can remember, perhaps, what inquiry was made of you with reference to William E. Dodge?

A. I recollect the purport of it.

Recross-examination:

Q. Mr. Kelly, did you ever at any time have any conver-
172 sation with William E. Dodge in which you said to him that this road would derive money to any extent from the sale of village lots?

A. I never had any conversation with Mr. Dodge whatever, and never talked with Mr. Dodge about any village lots or town lots on the line of the Green Bay & Minnesota railroad.

Q. Hadn't there been any route surveyed before you came into the Green Bay road, and route from Green Bay west, which when you came you refused to adopt?

A. No.

Q. Had there been no survey until you made one?

A. There had been a survey made to the Wisconsin river. Another survey had been made from a point on Lake Pepin, on the Mississippi river, opposite Wabasha, east to the Wisconsin river. After I became connected with the road my representations and influence caused a new survey to be made.

Q. You changed the route?

A. And the company by a resolution changed the line of the road, so that we struck the river at Winona instead of Lake Pepin.

Q. Lake Pepin is further north?

A. About thirty miles.

Redirect examination:

Q. Now, go on and state what you have a desire to, in respect to the matter inquired of, in which William E. Dodge took part.

A. I don't think I desire to say anything more about that question.

Q. Well, was there anything in reference to John I. Blair?

A. Well, I have stated that Mr. Blair was the only Eastern gentleman connected with the road who ever had anything to say about lands along the line of the road and town lots or village lots.

Q. Before you go any further state who Mr. Blair was; what connection he had with the company, if any.

A. Mr. Blair himself held a large amount of the bonds and the stock of the company.

Q. Where did he reside?

A. He resided in New York. He was also a large stockholder in the Lackawanna Iron and Coal Company, which corporation held a large amount of our stock, and Mr. Blair was a director of that last-named company, but more particularly had in charge matters connected with the Green Bay & Minnesota railroad in the interest of the Eastern bondholders. Mr. Blair, as I said before, had this in charge, and Mr. Blair was the party who was chiefly instrumental in having the road placed in the hands of a receiver, and in the proceedings that took place up to this time. Mr. Blair, as I said before, came out West for the purpose of settling two questions—first, as to whether that road should be extended from Merrillon to the Mississippi river or not; and, second, what route should be chosen if the extension was decided upon. When we were driving down Trempealeau Valley Mr. Blair remarked to me this, in connection with lands along the line of the road. He said: "Mr. Kelly, a few of us must get up a land company and buy up tracts of land along the line of this road and plat town sites and start towns, and we can make a good deal of money, a few of us, in that way." He went on to say that he had a land company organized in connection with a railroad in Iowa and the stockholders of that land company had realized over $200,000 from the sale of lots, and it would be a good thing for a few of us to get up a similar company in connection
173 with the road, as he thought the sale of lots would pay us handsomely. That is all the conversation I ever had with any Eastern bondholder or stockholder regarding the lands or lots along the line of the road.

Q. When was that?

A. That was in the spring of 1873, when we were going down from Merrillon to the Mississippi river over the line of the road.

Q. Was anything done in pursuance of that proposition of his?

A. I never alluded to it again.

Q. Nothing done then, so far as you know?

A. Nothing was done under that suggestion at all.

Q. You said something in your cross-examination this morning in regard to your salary of $4,500, which you received at one time.

PLAINTIFF'S COUNSEL: $5,000, I believe.

A. I said this morning, in connection with the questions of Mr. Larned's in respect to my compensation from the company, that at the time I took this contract, or earlier, I was receiving $4,500 salary from two or three corporations outside of the company, and that I was getting an income of from $7,000 to $10,000 a year from other sources outside of the company, and perhaps it would be proper for

me to add to that, that very soon after I took this contract I ceased my connection with the other two corporations to the extent of receiving any salary at all.

Q. Any other sacrifices made?

A. Well, I was obliged to leave attention to my private business, which was then bringing me in from $7,000 to $10,000 a year.

Q. Did that income cease or not?

A. My business was injured thousands of dollars, but still I continued to receive some income from it.

Q. That is, the business of Elmore & Kelly?

A. Yes, sir.

Q. During the time while you were contractor who had control of the general business of the company?

A. The parties who really controlled the company and dictated all the important matters were the bondholders residing at the East. I always consulted them in regard to the election of the board of directors, and in regard to the extension of the road, or as to the location of the road. I always consulted them, and no contract of any importance was made, after the first year of my connection with the road, except after consultation with them.

Q. Then you did not yourself control the business affairs of the company.

A. I did not, but the Eastern bondholders furnished me with their stock with the understanding that it was to be voted for certain persons for directors. I will mention, of the many contracts that I consulted the parties at the East about, a contract with the Union Steamboat Company, whereby the railroad company guaranteed a certain amount of gross earnings. The directors and Eastern bondholders were also aware of my contract with the company, and of its tenor and import, and some of them were shown a copy of it.

Q. Will you state what was the extent of your management of the road during the time while you were contractor in building the road?

A. Well, I was performing the duties usually incumbent upon the general manager under the provisions of that contract, subject, of course, to the actual control of the Eastern bondholders.

174 Q. But you did not have the absolute control yourself?

A. I did not.

Q. Did you really perform anything or do anything under your contract except to build the road or attempt to build the road, according to the contract, and to raise the means for that purpose?

A. That is all, with the exception that the contract provided that I should perform the duties usually incumbent upon the general manager—duties expressly provided.

Q. That was during the process of construction?

A. Yes, sir.

Recross-examination:

Q. Will you let me ask just one question. You say that you were a member of the firm of Elmore, Kelly & Co. Was the business of that firm carried on while you were contracting to build the road?

A. It was.
Q. And you continued a member of it?
A. I did.
Q. Did the road have anything to do with Elmore & Kelly?
A. Yes, sir.
Q. What?
A. Elmore & Kelly, as agents for the line of boats at Green Bay, running between Buffalo and Green Bay, as forwarding and commission merchants and as owners of docks at that point, received a large portion of the rails and fastenings.
Q. They received the rails and fastenings?
A. Yes, sir.
Q. From the boats?
A. Yes, sir.
Q. Well, what did they do with them?
A. They paid the advance charges and freight up to Green Bay and then passed them over to the custody of the company, to be used for the company purposes.
Q. Did their grain business connect itself with the road in any way?
A. Elmore & Kelly had shipping stations at various points on the line of the road.
Q. Did not they control the wheat business of the road, substantially?
A. They were the principal buyers on the road.

Redirect examination:

Q. Anything further in explanation to what has just been inquired about?
A. I would like to say that Elmore & Kelly advanced freights on railroad iron and supplies received at Green Bay from the East at different times about $15,000, which money the company had three or four years before it was finally paid. That Elmore & Kelly, as wheat shippers, never received a better rate on any freight going from them or going to them over the road than any other party was entitled to receive and could receive and did receive; that no favor was shown to Elmore & Kelly on the part of the managers of the Green Bay & Minnesota railroad which was not proper, fair, and right and usually extended to shippers of the same magnitude and in the same line of business.
PLAINTIFF'S COUNSEL: They didn't get any rebates on the shipping of wheat?
A. There were rebates given to every shipper on the road.
Q. They got just the same as the rest?
A. Yes, sir. Perhaps I should explain by saying that at that time the railroad business was conducted upon the system of re-
175 bates and the tariff rate seldom adhered to. I would like further to say that all the rates given Elmore & Kelly were given to them by the freight agent of the company without consultation with me; that the freight agent was instructed generally, under all circumstances, to treat Elmore & Kelly as any other shippers in the same position should be treaedt.

Q. Look at these three contracts, Mr. Kelly, and state if they are the original contracts for some of the lands described in the complaint.

A. My impression is that the original contracts in those three cases were made by Mr. W. J. Abrams—that is, made by him, and that I discovered that they were erroneous, and had the attorneys at Green Bay write out new ones.

Q. Were they signed by the parties?

A. They were signed by the parties and were the contracts under which the deeds were given.

Q. Do you know anything about the signatures?

A. I do not.

"Exhibit E" is offered in evidence, which has already been offered in evidence.

Also offered in evidence deed of Frederick Muehl to David M. Kelly, marked "Exhibit J."

Also offered in evidence the deed of Simon Munger to David M. Kelly, marked "Exhibit K."

The defendant Kelly reoffers in evidence the three separate contracts between himself and the Green Bay & Lake Pepin Railway Company, marked, respectively, "Exhibits A, B, and C," and also reoffers in evidence copy of the letter of D. M. Kelly to Timothy Case, receiver, dated November 22nd, 1878, marked "Exhibit L."

Defendant also offers the deed from J. R. Sechlar to himself, as agent, dated the 3rd day of June, 1876, marked "Exhibit B."

Defendant also offers in evidence the copy of the complaint in the case of Garsia against Kelly, marked "Exhibit D."

Defendant also reoffers the proposition by the Green Bay & Minnesota Railway Company, and D. M. Kelly to L. G. Merrill, June 8th, 1877, marked "Exhibit A."

Counsel for the plaintiff makes the same objections to the reoffering of each and all of the above documents that were made when the same were first offered.

Defendants' counsel offers in evidence another deed, dated the 20th of July, Leander G. Merrill and Nancy, his wife, to David M. Kelly, marked "Exhibit M."

Defendant offers in evidence a deed from Frank Hull and wife to Ketchum and Kelly, dated the 2nd day of November, 1872.

The offering of this deed objected to because not relevant.

Deed received in evidence and marked "Exhibit N."

Q. Is that a deed you refer to?

A. That is a deed of one of the tracts besides the Dr. Wood land at Manawa.

Deposition of Henry Ketchum.

HENRY KETCHUM, called as a witness on the part of the defense, being duly sworn, testified as follows:

Direct examination by Judge ELLIS:

Q. Where do you reside, Mr. Ketchum?

176 A. At New London, Wisconsin.

Q. What is your occupation?

A. Well, lumbering principally.

Q. Age?

A. Fifty-eight.

Q. Were you ever president of the Green Bay & Lake Pepin Railroad Company?

A. Yes, sir; I was.

Q. In what year?

A. I think in 1871 until 1877.

Q. Well, that included the time while Mr. Kelly was contractor?

A. Yes, sir.

Q. You are familiar with many of those transactions?

A. Yes, sir.

Q. Do you remember anything about the acquiring of the Whitehall property, so-called?

A. I do.

Q Will you state under what circumstances that was acquired, how and by whom—David Wade's property, I think that is the name.

A. I purchased a tract of land of Mr. Wade.

Q. You purchased it?

A. Yes, sir.

Q. Go right on now and state the terms and conditions of the purchase of the piece, and who bought it and all about it?

A. Well, I negotiated with Mr. Wade for the piece of land, I have forgotten the number of acres, where Whitehall now stands. Mr. Earle was with me at the time, and part of the negotiation was completed by Mr. Earle.

Q. What was the price paid for that property?

A. $3,500, I think.

Q. What was the land worth at that time? You may first state whether you are familiar with the prices of lands along the line of the road—were at that time.

A. Yes, sir; I was.

Q. Including Whitehall?

A. Yes, sir; I was.

Q. Now, what was that land worth?

A. Well, I should think it was worth $2,500 to $3,000 for ordinary purposes.

Q. Was it worth any more than $3,500, the price originally paid for it?

A. $3,500 was a large price for it at that time, and has been ever since.

Q. Who paid for that land?

A. It was paid for with my money. I paid a part of it; Earle done the principal part of the paying as agent for me. My money paid for it.

Q. Do you know whether any of that land was platted or not?

A. Yes, it was; a portion of it.

Q. Was any portion of it, and, if so, how much, used for the railroad company?

A. Well, it has the right of way and the depot grounds.

Q. How much was occupied for depot grounds?

A. Well, I could not say, for I don't remember how far the track runs across it; for the depot grounds of itself, it don't occupy but little outside of the right of way.

Q. Was any portion of that land necessary for the use of the company, except the right of way and the depot grounds?

(Objected to because the witness has not shown himself to be an expert as to what is necessary for railroad use.)

A. I should say not.

Q. Have you had any experience in railroad building?

A. I have.

Q. How much, and what is the general character of your experience?

A. My principal experience has been on the Green Bay & Minnesota.

Q. How many years have you been engaged?

A. I don't know that; about eight years; a little over eight years.

177 Q. You say your experience is confined to that particular company—that road?

A. Yes, principally.

Q. Then you have been engaged on some other road?

A. Yes, sir.

Q. Are you now building a railroad?

A. Yes, sir.

(Last question objected to; what the witness' experience was at the time is the only proper question.)

Q. Well, from such experience?

A. I have had some railroad experience prior to that in the State of New York.

Q. How?

A. Oh, in the way of building.

Q. Building portions of a railroad?

A. Yes, sir.

Q. Well, from such knowledge and experience as you have had, was any portion of this land necessary for the use of the company, except the portion used for the right of way and for depot grounds?

A. It was not, in my judgment.

Q. Have you any knowledge of the purchase of the Merrill lands from B. H. or L. G. Merrill?

A. Yes, sir.

Q. Had you anything to do with the purchase of that land?

A. I had.

Q. Well, you may go on and state what you know about it.

A. I was through that country, looking out the line for the road, etc., on behalf of the company, and L. G. Merrill took considerable interest in showing me the route where he had considered the best route for the road, etc. I looked the matter over. After being there a number of times with Mr. Merrill he finally suggested this place of crossing the West Wisconsin road, and complained that the manager of the West Wisconsin had promised him a station prior to that and hadn't given him any, and that I was to work to help build the road, and he wanted Mr. Kelly to help get a station fixed on that road, and he finally made a proposition of what he would do if we would. I laid that proposition before Mr. Kelly, and consequently afterwards the contract was closed in regard to it—the same contract that was referred to here.

Q. One contract was there, or two?

A. There were two.

Q. State what that first contract was for.

A. It was forty acres of land on section 23, where Merrillon now stands.

Q. To be conveyed to whom?

A. It was to be conveyed to Mr. Kelly, and the right of way to all lands was to be conveyed, and a subscription of $50,000 was to be made to the company. That is the way they were to subscribe—that is, L. G. Merrill; B. H. Merrill had nothing to do with the subscription. L. G. Merrill was to subscribe $50,000 to the capital stock of the company, and the two Merrills were to give the right of way through all lands they owned in Jackson county; that is my recollection of the provisions of the contract.

Q. What were the inducements to that purchase—the sale on the part of the Merrills?

A. The inducement to subscribe to the capital stock and the right of way was to procure the road through the country; the inducements for the forty acres of land to Mr. Kelly was for the purpose of securing his influence to get a station at the crossing of the other route and to build up a town there and enhance the value of
178 property, for they owned large tracts of land there, and Mr. Merrill said he would give away a portion of the property to enhance the value of the other greatly, and thought it was the best investment he could make of it.

Q. Do you remember anything about the land bought from Mr. Briggs?

A. I do.

Q. What was paid for that land? Who bought that?

A. That was negotiated principally by Mr. Hiles and myself. The first piece purchased we paid $500 for; I paid the money myself for it; my own money.

Q. How much land?

A. My impression is that there was about 190 acres; and then after

that we bought ten acres more; that became necessary afterwards in order to square out the piece that he wanted to plat, and I think we paid $300 for ten acres more for the purpose of platting. The 200 acres, I think, cost us $800.

Q. That little piece was necessary for what?

A. I said for the purpose of squaring out a piece, a plat that we were laying out.

Q. Squaring out a piece you were laying out on the land?

A. Yes, sir.

Q. Well, what was that land worth?

A. Well, I don't think for any purpose, except for the purpose of platting, it was worth more than ten shillings an acre. I bought some lands adjoining that I bought at ten shillings an acre of the State, but these we bought we paid twenty shillings for the purpose we wished to use it for—that is, platting, etc. We paid, I think, $800 for about 200 acres, making it about $4 an acre.

Q. Do you remember how much was bought from the State by yourself? Who bought that land from the State?

A. I bought it; I am not sure how much; my recollection now is that it was ten forties.

Q. In whose name?

A. My own name; Mr. Kelly and Mr. Hiles shared with me. I bought it with my own money, and they afterwards paid me their portion of money; also the Briggs land was bought with Hiles and Kelly.

Q. How much of the Briggs land, if any, was necessary for the company?

A. Well, what was necessary—that is, the right of way and what was necessary for the depot grounds.

Q. Well, how was it with the rest?

A. It was not necessary for the use of the company.

Q. Well, with regard to the lands bought from the State. Were any of those lands necessary for the use of the company?

A. I don't know whether the railroad touched any of those or not; it might have touched one forty, and I think that is all, and I am not sure whether it touched that at all. The rest of them were remote from the road. I don't know whether it hit them any or not. I don't think it hit but one piece, if it did any.

Q. Did you hear the testimony of Mr. Marquis Wood, given here last summer?

A. I did.

Q. On this examination?

A. I did.

Q. What conversation did you have with him?

A. Well——

179 Q. What arrangements were made with him respecting the lands which he contracted and deeded?

A. Mr. Wood was an old settler there in the country, has lived there a great many years with me, and has been, ever since I lived in the country—twenty-odd years now—trying to get the county-seat

of Waupaca county moved to there, claiming that he held the land in the center of Waupaca county.

Q. That place is Manawa?

A. Yes, sir; at Manawa. When we ran the road through there it happened to run through near Manawa, what he called Manawa. He had a place platted a little ways off from that, and he was exceedingly anxious that he should have some assistance about starting a town there, and finally made a proposition to me that he should give to Mr. Kelly if he would assist him in building up a town there, and try to get the county-seat moved there.

Q What did he finally agree to do?

A. He agreed to deed the land, I think a hundred acres—one eighty, and I think a twenty.

Q. To whom?

A. To Mr. Kelly.

Q. Well, did he not agree to deed the right of way to the company, and did he not do so?

A. I think he did. While I don't remember whether he did in the same deed or not, my recollection is that prior to this that I got him to sign off the right of way—that is, he was to get a large portion of the right of way. I got pretty much all the inhabitants through there to sign a sort of contract that they would deed the right of way whenever the road was completed over such and such lands, and I think that Mr. Wood had signed such a contract prior to his deeding or his making the contract for the balance of the land.

Q. You may state all the particulars about that.

A. Well, that is in substance the particulars. He made a contract to give the land.

Q. He had agreed before to give the right of way to the company through that land?

A. Yes, sir; I think he had signed prior to this the contract for the right of way.

Q. And, then, after having done that, he agreed to deed the rest of the land to whom?

A. To Mr. Kelly.

Q. When he made the agreement to deed the land to Mr. Kelly, what was the understanding about that—whether it would be for the use of the company or for Kelly individually.

A. Mr. Kelly individually it was understood fully.

Q. That was understood fully?

A. Yes, sir; at the same time we made the negotiation for the land I was trying to get $5,000 more of local aid bonds. I attended one election there and got $10,000 voted in that town. I submitted a proposition trying to get another vote of $5,000.

(Anything relating to local aid is objected to.)

Q. You may go on and state.

A. And Mr. Wood said he didn't think we could carry the further vote of $5,000, but I insisted strongly that we must get the right of way and all the local aid we possibly could, because it was
180 a new company and the company was poor. He signed the

stipulation for the right of way, but we did not carry the vote for the $5,000.

Q. Were there any representations made to Mr. Wood that the land he deeded to Mr. Kelly was for the company?

A. No, sir; there was not. It was distinctly understood and stated to him that it was not; that it was important to have Mr. Kelly's influence in consequence of the influence he had with Mr. Marsh, the president of the Fox River Company. Mr. Earle was also present with me at the time of the negotiation with Dr. Wood.

Q. Was there anything said about assisting Mr. Kelly in carrying out his contract?

A. The doctor said that he was anxious to give all the assistance he could, in every respect, in regard both to the road and to Mr. Kelly's interests, and all manifested a general interest in the enterprise, both individually and generally.

Q. Do you remember anything about any passes to E. Thurston and wife?

A. I remember giving Mr. Thurston a pass——

Q. These are signed by you, are they?

A. Yes, sir. Thurston was postmaster in the town of Prerton, and kept the only public house there was kept in the town of Preston.

Q. Now, you may state all about the negotiation with Mr. Thurston.

A. The negotiation came before the pass.

Q. Well, now state all about the negotiation.

A. It was embodied in the proposition of that town of Preston, that they were to deliver their bonds when the railroad was completed to the town of Preston and a depot established in that town. (Anything in regard to local aid is objected to.) The consequence was that when we got the road built ready for ironing and the iron was a little ways back it became necessary for us to decide at what points the station should be. It was common in all towns through that portion of country for some of the people to want the depot in one place and some in another. There happened to be two roads. Some of the inhabitants wanted it on the upper one and some on the lower one, where the present town of Blair now stands.

Q. Come to the agreement as soon as you can.

A. Blair is in Preston.

Q. Is not that the same place?

A. Yes, sir; it is the same place. There was not any Blair then. I am speaking about what did exist at the time. There was not any Blair then—Blair has come up since—and we decided that was the best place for a depot. Consequently, Mr. Thurston and Mr. Porter, being very anxious to have it located near them, *they* came and said they wanted it located there. Mr. Thurston wanted to know what we should want of them if we located there. I stated to them the same as I did to the others. They said they wanted a lumber yard located there. I told Mr. Thurston that if he would give us 40 acres of land there I would go on and plat it, and that would make a town there. He made a remark like this: "I bought this 40 acres of the

State and paid $50; if I can give away this 40 acres that cost me $50 and double the value of all the land I have, I think it would be a good investment." Consequently he went down to his house and made a deed.

Q. To whom?

A. He made the deed to Kelly and Hiles and myself. After
181 everything was finished and closed up and arranged I sat down to the table and filled up a pass, and gave him and his wife an annual pass. That was the first and only thing that was stated about the pass at all. It was a complimentary pass, and it was what was practiced in almost all the towns. The leading men in the town generally had passes, and it is not uncommon, and is generally practiced on other roads throughout the State.

Q. Was there any agreement at that time to give them a life pass?

A. No, sir; there was nothing said about it. They didn't even ask for the pass that I gave them. They didn't know that they were going to have it, and they hadn't said a word to me about it nor I to them. The next year, when the pass ran out, Mr. Thurston came around to the station. He was there very often, being postmaster and keeping the hotel, too, and I gave him another pass. That was all there was about it. I never said a word to him about a life pass, and I never heard of it until Mr. Kelly spoke to me about the letter he had received.

Q. Did you establish a lumber yard there and make a town plat?

A. Yes, sir; I did and sold a large amount of lumber there.

Q. Well, how much of that tract was necessary for the use of the company?

A. Well, for the right of way and the depot; that is all.

Q. How much did the depot cover?

A. Well, the depot is almost all. I think it is entirely on the right of way. Of course, it is necessary to have a little outside for the sake of going around the depot.

(The question as to what was necessary for the use of the road is objected to.)

Q. Do you remember anything about the land that Mr. Kelly acquired from Sally Munger?

A. Yes, sir; I do.

Q. Well, sir, you may state what you know about that purchase or transaction.

A. It was in the fall of 1871. Mr. Abrams and C. A. Randall and myself came up there, and the road was then located and graded past that place clear through to the Wolf river.

Q. Well, go on.

A. And we talked it over about the right of way, about the establishment of a depot there, &c., and about the road generally, and they were anxious to have a depot there. I asked them how much they would give for the location of a depot there and a town to be started and the assistance to build it up, and they went on to tell different things; said they would give so much apiece. There was quite a little gathering. One said they would give so much and

another one so much, and my recollection is that Robbins was to give three acres, or something like that, and I forget the exact pieces.

Q. I am speaking particularly about Sally Munger now.

A. They are very similar; they were under one transaction.

Q. Do you remember a conversation with her particularly?

A. Yes, sir.

Q. What did you tell her?

A. I told her that the land for the depot would be deeded to the company and the balance would be deeded to Mr. Kelly. They wanted to know why it was to be deeded to Mr. Kelly, and I said that because he had a contract for building the road, and all
182 except the right of way and the depot grounds were to go to him, and that the company had made a contract to that effect with him to assist him in building the road.

Q. You don't mean they made a contract that he could get this piece of land?

A. But he was to have all such pieces of land. That was my understanding of the first contract. Mr. Abrams was with me. Mr. Abrams made the contract with each of these parties—that is, he drew the contract. I done a portion of the contract. We all done the contract together.

Q. Was there anything said to Sally Munger about the land being intended for the use of the company?

A. It was stated it was not intended for the company—any excepting for the depot. The balance, it was expressly understood, was to go to Mr. Kelly.

Q. You may state whether that was the general understanding among all the parties who have donated lands at Seymour.

A. Yes, sir; it was the express understanding, and I and Mr. Abrams also explained to them why.

The taking of further testimony was here adjourned to Friday, November 12th, 1880, at 9 a. m.

FRIDAY MORNING, *November 12th*, 1880.

Parties met pursuant to adjournment and proceeded with the examination of Mr. Ketchum.

Q. You may state what you know about that land conveyed by Minnie, the wife of Mr. Robbins. You can state what you know about that transaction.

A. Those transactions were all similar—transacted at the same time and transacted at Mr. Robbins' house principally.

Q. At Seymour?

A. At Seymour; yes, sir.

Q. Well, what was the understanding and agreement with regard to that land?

A. Well, I could not positively say how much they gave to the railroad company for depot grounds. I recollect that the depot grounds were to be furnished from the land they contributed. Anything more than the depot grounds, I am not able to state whether they did or whether they contributed two pieces.

Q. She testified she conveyed eight acres.

A. I recollect that it was three acres for depot grounds. If they conveyed eight the other five went to Mr. Kelly. I recollect that three acres was what we decided was necessary. That is what we required for depot grounds.

Q. Well, what was said and agreed upon with regard to Mr. Kelly—with regard to the portion that was to be conveyed to Mr. Kelly?

A. What was conveyed to Mr. Kelly was conveyed for his own use, as I stated in the other cases yesterday.

Q. Do you know anything further about that?

A. Nothing particularly further.

Q. The land conveyed by Minnie Hudson and Mrs. Robbins?

A. Nothing further.

Q. Did you hear the testimony of Mr. Meuhl?

183 A. I did hear it; I think I heard the testimony of all the witnesses.

Q. Is he one of those who conveyed land in Seymour?

A. Yes, sir.

Q. And you said the same understanding was had with him as with the rest?

A. Yes, sir.

Q. Do you remember of telling him anything—speaking to him about the land being deeded to Mr. Kelly himself?

A. Yes, sir; it was talked of; he asked the question why; I stated to him why. Mr. Kelly had contracted to build the road, and it belonged to him, except for the depot and right of way.

Q. That the land belonged to him?

A. That the donations belonged to him; whatever was contributed was given to Mr. Kelly; the land was given to Mr. Kelly—that is, it belonged to him; it was intended that it should be conveyed to him for his benefit and control, fully.

Q. The rights of way and depot grounds to Mr. Kelly?

A. No, sir; I said that the rights of way and depot grounds were to the company and the balance was to Mr. Kelly, I said.

Q. Do you remember Mr. Burdick?

A. Yes, sir.

Q. Was he one of them?

A. No, sir; he was at Black Creek.

Q. Well, what was the understanding with Mr. Burdick?

A. I did not have any transaction with Mr. Burdick at all; I was out there. It was like this: At Black Creek, in getting a subscription there of $12,000, there was a clause in the proposition of that town that the town should have a right to locate the depot grounds by furnishing the grounds free to the company. At the time this took place it was when the road was graded just past there, and I went through there and selected the place for the depot at Seymour, and also at Black Creek. When I went to Black Creek I went to the town officers and told them that we wished them to fix the place for the depot in accordance with the condition in the proposition, and they, with Burdick and Randall, who conveyed the land, agreed

upon the spot for the depot, and I had nothing further to do with the transaction.

Q. Do you know whether the depot was on this land conveyed by Mr. Burdick?

A. My understanding is that they conveyed two pieces—one to the company and one to Mr. Kelly.

Q. Was the depot on the ground conveyed to Mr. Kelly?

A. No, I understand not; that the piece they conveyed to Mr. Kelly, my understanding is, was on the south side of the railroad, and the depot was not on the piece conveyed to Mr. Kelly; but still, as I said before, I didn't have anything to do with that transaction.

Q. Do you know how many acres there were conveyed to Mr. Kelly?

A. No, I don't remember; Mr. Burdick, I think, said five acres.

Q. Do you recollect anything about that?

A. Well, I recollect there was five acres; my recollection was—still it is more hearsay than anything else—that there was five acres conveyed to Mr. Kelly and three acres to the railroad company.

Q. Do you know that Mr. Kelly acted as vice-president and general manager in 1872?

A. I don't.

Q. How long after did he continue not to be an officer of the company?

184 A. Well, he was not an officer of the company until April, 1874, after they commenced building the road.

Q. In what capacity did he act between 1870 and 1874?

A. As contractor.

Q. Were you president during the time he was contractor?

A. Yes, sir; a portion of the time; I was not all the time; when he had his first contract I was not president of the company.

Q. You know whether he performed the contracts?

A. Yes, sir.

Q. Fully completed the contracts?

A. Yes, I understood that he did.

Q. Do you know whether Mr. Hiles was a partner with Mr. Kelly, or with Mr. Kelly and yourself, in any contract for the construction of the railroad?

A. He was not.

Q. At any time?

A. No.

Q. Never had any?

A. No, sir.

Q. Was he a partner with you in any other transactions connected with the road?

A. No, sir.

Q. And did he do anything in obtaining rights of way or in assisting in obtaining rights of way along the road where he was at work?

A. In some instances, where the right of way was not procured in advance of their wanting to use the ground, he assisted in getting the rights of way for the purpose of not being delayed in the work.

Q. Was he not a general agent for the purpose of obtaining rights of way along the road, or did this because simply he wanted to expedite his work?

A. It was simply to expedite his work; Mr. Hiles took an interest in the road, but he was not an authorized agent.

Q. He was not specially authorized to obtain rights of way?

A. No, but volunteered to assist in many ways—to assist the interests of the road.

Q. Did you ever take any lands along the line of the road in trust for the company?

A. No, sir; I did not.

Q. You have taken the deeds of some lands in your own name, have you not, in some places along the line of the road?

A. I bought lands.

Q. You bought some lands?

A. Yes, sir.

Q. Did you ever buy any of those lands except for your own individual use?

A. No, sir.

Q. Ever buy any for the company?

A. No, sir; I have no recollection.

Q. Were any of those lands donated to you or were all those bought?

A. There was one instance at Blair, it was called; lands were conveyed on certain conditions of our promising certain things.

Q. By whom?

A. Mr. Thurston.

Q. Now, you may state what the conditions were.

A. The conditions were that we should have a lumber yard located at that place, and we said we would locate it for certain amounts of lands, and we would plat a portion of it, build lumber yards, and help build up the town; they said that the benefit derived from it would enhance the value of the rest of the property.

Q. State whether it was understood that the conveyance was to be for your benefit individually?

A. It was.

Q. It was all talked over, was it?

185 A. Yes, sir, and the deed was made to Hiles and Kelly and myself at the time. The deed was made out in accordance with the understanding——

Q. Did the railroad pass over that land?

A. Yes, sir; it did.

Q. How much land was conveyed there?

A. Forty acres.

Q. How much of that land besides the right of way and depot grounds was necessary, if any, for the use of the company?

A. Not any.

Q. Was any obtained for the use of the company, except the depot grounds?

(Question as to what was necessary for the use of the company is objected to.)

Q. Did I ask you how much land was necessary for the use of the company—depot grounds?

(Objected to.)

A. I think so. You did ask me that question.

Q. And you answered it?

A. Yes, sir.

Q. Do you know whether the land conveyed by Thurston and Porter was conveyed after the location of the road across the premises or not?

A. The road was located and graded. I was laying the track a little ways back at the time.

Q. Located and graded before they made the arrangement?

A. Yes, sir.

Q. Before there was any bargain with them at all?

A. Yes, sir; they conveyed it the same day they made the bargain.

Q. Did the railroad company furnish any consideration for that conveyance?

A. Not any.

Q. You may state what the object was in Thurston and Porter giving that land, fully.

A. For the purpose of building a town there at that point and they getting the benefits to their lands there, instead of its being located at the crossing of the other road, one or two miles east.

Q. Was there anything done toward the promoting of a settlement there, or building up a town?

A. Yes, sir.

Q. What was done?

A. We immediately platted a portion of it.

Q. Platted a portion of the land?

A. Yes, sir; I got in a good many inhabitants, located a lumber yard there, and established a wheat market; got people to buy wheat and made a general market there for produce, furnishing lumber, etc., for the building up of a town.

Q. Did you purchase any land from the State of Wisconsin near the road?

A. Yes, sir.

Q. Well, for whose benefit did you purchase those lands?

A. Purchased them for my own use and for the use of Mr. Kelly and Mr. Hiles, who had an equal interest in it. I bought it in my own name in the first place.

Q. How much did you pay for it?

A. I paid the Government price; I think it was ten shillings an acre.

Q. Whose money?

A. Paid my own.

Q. Was that bought for the railroad company?

A. It was not.

Q. Was it useful to the company?

A. No, sir; it was not.

Q. Necessary?
A. No, sir.

(The four foregoing questions are objected to.)

Q. Did any of it touch the railroad?
186 A. I am not sure whether it did or not; it might, but I think not, but one piece, and I am not sure whether any of it did.

Q. How far from the railroad was the most remote part of the land?

A. I cannot say; I never was on some portions of it. I cannot tell just exactly how far.

Q. Give a general idea.

A. Well, anywhere from a mile to two miles. I ain't familiar with it.

Q. Do you remember how many forties there were?

A. My recollection is that there were ten forties. I am not positive as to that.

Q. Was any part of it occupied by the railroad?

A. Not to my knowledge; no, sir; not unless it is crossed by the right of way. I don't know whether it is or not.

Q. Since you received, either alone or jointly with others, any conveyance or conveyances of land along the line of the road has the company ever made any demand on you for the conveyance to them?

A. They have not.

Q. Has the receiver, Timothy Case, or any one for him, made any demand on you to convey those lands to him or the company?

A. Not the lands specified in the complaint.

Q. Well, any?

A. They have spoken to me—Mr. Abrams has—about conveying some land near New London; wanted to buy the right of way to some lands I had between New London and Green Bay, but about no others.

Q. Those are the lands that you bought before?

A. Lands I owned for many years.

Q. Long before the road was laid out?

A. Some of them for twenty-five years.

Q. Have the officers of the company or the receiver or any one for them ever said anything to you to the effect that those lands ought to be conveyed to the company or anything of that kind?

A. What lands do you mean?

Q. Those lands you have obtained along the line of the road.

A. No, sir; not to my knowledge.

Q. In obtaining those lands or any of them was there any secrecy resorted to on your part?

A. There was not.

Q. Or on the part of Hiles or Kelly, as far as you know?

A. Not to my knowledge; no, sir.

Q. How was the business done, openly or otherwise?

A. Fully so; openly; yes, sir.

Q. Did the officers of the company know it at the time? Were they aware of the transactions at the time they were made—that is, those purchased along the line of the road by yourself and Mr. Kelly?

A. Well, I don't know whether they knew it or not. They had the opportunity of knowing it. I never considered it was anything they were interested in whatever, and I never took any pains to keep them from knowing it. I considered it an individual transaction and transacted it the same as I would any individual transaction. I knew they were knowing it, different ones of them.

Q. Who had the charge of obtaining the right of way at that time?

A. It was my business specially.

Q. Then you knew all about it?

A. Yes, sir.

Q. Who was the secretary of the company at that time?

187 A. Well, I think Mr. Ellis at that time was secretary.

Q. Fred. S. Ellis?

A. Yes, sir.

Q. What offices or office did Mr. Abrams hold in the company at that time?

A. He was a director of the company and was employed by the company; was paid a salary all the time while we were constructing. I think that he some of the time acted as paymaster. He was used in different ways.

Q. Did he not also assist in obtaining the right of way?

A. Not with me. In the fore part, before they got to New London, he had done something in the right of way on west of there. I think he had nothing to do with the right of way—not as long as I had control of it.

Q. Was he not aware of these transactions?

A. Oh, yes; he knew of them; there were different transactions along. He used to be over the road different times and used to talk about them.

Q. You have already testified in regard to Dr. Wood's property, I believe?

A. Yes, sir.

Q. Do you know anything about the conveyance from Mr. Kelly to Mr. Hiles, in which Mr. Kelly sold out his interest in certain lands?

A. I know something of it. I was present at the time it took place.

(Objected to.)

Q. Now, state what you know about the transaction, and especially about the consideration for the conveyance of the land by Mr. Kelly to Mr. Hiles.

A. My recollection is that Mr. Hiles gave him $7,000 for his interest in the Dexterville and Scranton Boom Companies and his interest in 12,000 to 14,000 acres of land in Wood county, and also his interest in and about Taylor, in some school lands he had

bought of the Fox River Improvement Company that Mr. Kelly and Hiles and myself held together, and his interest in Blair and also in Arcadia.

Q. Which was the most valuable of those lands?

A. O, the lands about Dexterville and the boom company was the most valuable.

Q. What is there about that boom company that was of special value?

A. There was two companies organized under the State law for damming and holding logs and booming and sawing and manufacturing. I cannot tell all the conditions now.

Q. It was valuable, was it?

A. Yes, sir; the lands were specially valuable there. A great many pine lands.

Q. Can you give any idea of that boom company—what it was worth?

(Objected to.)

A. It would depend upon the use made of it. There is one used to some extent at Scranton; there is one at Dexterville which was not carried out as anticipated, but still it is valuable.

Q. $7,000 was the agreed price for all these properties and interests?

A. Yes, sir; his interest only.

Q. Were any of those lands necessary to the use of the company?

A. Not further than the right of way is concerned.

188 Q. Were they ever intended for the use of the company or bought for that purpose?

A. They were bought for lumbering purposes, not for the use of the company—not in any manner; bought with our individual money.

Q. Do you remember how much was paid by you and Mr. Kelly and Mr. Hiles for the various tracts of land which were conveyed to you three or any one for you—in all—the whole amount that was paid?

A. Where do you mean?

Q. All along; the land that you bought.

A. I could not tell in the whole, because those lands—you see there is 12,000 to 14,000 acres of land; that cost a good deal of money. We bought some from the State, some from the Government, and a good deal we paid large prices for.

Q. You don't remember?

A. No, sir.

Q. Can you give any approximate to it? It is not necessary to be exact.

A. I could not give it.

Q. You are speaking now of the 12,000 or 14,000 acres. That 12,000 or 14,000 acres don't include these various tracts mentioned in the complaint?

A. No, sir; you take those down the valley along the immediate vicinity of the road, I think we paid in the neighborhood of $5,500.

Q. Those, then, are the lands described in the complaint?
A. Yes, sir.
Q. Do you know how much of that Mr. Kelly furnished?
A. Well——
Q. About how much?
A. Mr. Kelly and I furnished the biggest part. In the Whitehall property, of course Mr. Hiles was not interested in that. The Whitehall property was bought by Mr. Kelly and myself. Of course, we paid the larger portion.

Judge POWERS: I suppose all this testimony that is applicable can be used on the defense of either of the parties. They are not separate trials, as I understand it.

Q. You are one of the defendants in this action, I believe?
A. Yes, sir.
Q. What particular contract did Mr. Hiles have, if any, for the construction of that road?
A. The first contract that he had was for the grading from Grand Rapids to Dexterville, I think, a distance of about fourteen miles and a half.
Q. Any other?
A. And afterwards interested in a contract with a man by the name of Dayton, I believe. I guess the contract was made to Dayton. I think Hiles helped him build it, constructing it about a distance, I should think, of ten or twelve miles from there. I don't remember just the distance; to Big Indian creek, I believe.
Q. Was he connected in building the road in any other way?
A. Afterwards Hiles and Dayton took a contract beyond, from Merrillon to the Mississippi river, or to the junction of the Northwestern road.
Q. Did you receive any portion of the price or consideration that was to go to Mr. Hiles for work that he did?
A. I did not.
Q. Interested in it in any manner?
A. Not in any way.
189 Q. Whose exclusive business was it to obtain the necessary right of way?
A. It was mine exclusively.
Q. Had Mr. Kelly anything to do with it?
A. No; not directly.
Q. It was no part of his duty to obtain right of way?
A. No.
Q. Was there any cases in which the grading was in advance of the procurement of the right of way?
A. Oh, yes, a good many.
Q. What was done in such cases by Mr. Hiles, for instance?
A. Well, when he was not molested he went along and graded. Sometimes the parties objected and he had to do what was necessary. Sometimes they allowed him to grade without paying. Sometimes he made the best arrangements he could to keep them quiet. In

some places there were injunctions served. Sometimes he even signed bonds to get it put off—whatever was necessary.

Q. What he could?

A. To get them out of the way so as not to have his work interrupted?

Q. To go on with the work?

A. Yes, sir.

Q. Had Mr. Hiles any object in so doing except to help his work?

A. He had not.

(Objected to because the question relates to the intentions of another party.)

Q. What was the answer to that?

A. Never any interest except the interest along the line of the road. A great many people along the line of the road manifested interest. The general object in doing as he did was not to have his work delayed.

(Answer objected to.)

Q. Do you remember anything about obtaining a deed from I. A. Briggs and wife?

A. Yes, sir.

Q. What was the consideration for that deed? The land is here described as the N. ½ of the N. E. ¼, all that part of the N. ½ of the N. E. ¼ of the S. W. ¼ of sec. 32, T. 21, R. 9, north of Main street, in the village of Arcadia, east of the railroad?

A. What is the date of the deed?

Q. The answer states the 20th of April, 1875.

A. I was not personally connected with the transaction. As I understand that, Mr. Hiles signed a deed for conveying back a part. It was an exchange for some lands by the railroad lying part on one side and part on the other, and they deeded back and forth to exchange; and, as I understand, Mr. Hiles gave him $50—that is, the land Mr. Briggs conveyed to us was considered worth more than that we conveyed to him, and Mr. Hiles as I understand, gave him $50 to boot.

Q. Was that land necessary for the use of the road?

(Objected to.)

A. No, sir.

Q. What was the land purchased for—for whose benefit?

(Objected to.)

A. For the benefit of the parties they were deeded to—Mr. Hiles, Mr. Kelly, and myself at that time.

(Answer objected to.)

Q. Has the railroad used any portion of it?

A. Not to my knowledge, excepting the right of way. I think there was only conveyed what there is on each side of the road, so I

don't know that it covered that. My recollection is, from the description of the deed, that it was changing what there was on one side of the road to the other side.

Q. That does not include the right of way?

A. I think it don't. I am not positive, but that is my recollection.

190 Q. Do you remember a deed from Ebenezer Thurston and wife of the N. W. ¼ of the N. E. ¼ of sec. 16, T. 21, R. 7?

A. Yes, sir.

Q. Can you explain all about the consideration for that conveyance?

A. I think I explained that last night.

Q. And relative to the deed of Luke Porter, also?

A. Yes, sir; I explained that.

Q. As to the right of way, have any of those lands been deeded to the company?

A. I think not.

Q. Is the title held by yourself or by you three?

A. The title now, I think, is held by Mr. Hiles and myself. Mr. Kelly, I believe, conveyed his interest to Mr. Hiles.

Q. Have you been ready and willing at all times to convey the right of way over the line to the company?

A. Yes, sir; by the company paying for it.

Q. Why have you not done so heretofore?

A. Have not been requested to do so.

Q. When was the conveyance made from Thurston and Porter, after the location of the road or before?

A. No; it was located and graded at the time.

Q. When was the agreement for the conveyance made?

A. The same day that the deed was executed.

Q. Was the building of the road a consideration for the deed?

A. No; the road was built before and we were laying the track a short distance of there at the time.

Q. Do you know whether George Hiles and the Mineral Spring Company conveyed the right of way to the company?

(Objected to because witness is incompetent to testify.)

Q. Do you know whether they had taken it or not?

A. I understood that they had.

Q. You don't know anything more than that?

A. Not myself.

Q. What was the land worth when you got it from Thurston and Porter?

A. It was worth about ten shillings an acre; that was what State lands were selling for along there. We asked Thurston what he gave. He said he gave $50 for the forty acres.

(Objected to.)

Q. What were the particular inducements to that conveyance—those conveyances by Thurston and Porter?

A. Well, substantially for the purpose of assisting to build up a

town in the way of platting and aiding in the building up of a village and locating lumber yards, etc. I stated it fully yesterday.

Q. Did you testify fully in regard to the lands bought from the State?

A. I think so.

Q. Did you furnish the money yourself—the whole of it yourself?

A. Yes, sir; I furnished the money myself and took the deed in my own name at the time. They accounted to me for their portion of it afterwards.

Q. Hiles and Kelly?

A. Yes.

Q. You stated, I believe, that that was obtained before the location of the road over any of the land.

A. Yes, sir; before it was located along there.

Q. Have you always been ready and willing to convey the rights of way over any portion of those lands bought from the State in case the railroad does pass over it?

191 A. Well, I don't know that I am under any obligation to, and I don't know as I am, unless paid for.

Q. You are, if paid for it?

A. Yes, sir.

Q. Always have been?

A. Yes, sir.

Q. You testified in regard to the Briggs property, I believe?

A. Yes, sir.

Q. The complainant, I believe, alleges that at the time when the property was obtained from I. A. Briggs and wife assurances were made that that was obtained for the benefit of the company. How is that?

A. That was not the case.

Q. What was the case?

A. We paid our own money for it and bought it for our own individual uses.

Q. Was that understood by Mr. Briggs?

A. He had no reason to believe otherwise. He understood that he sold it for the purpose of building up the town, etc. We paid him a full consideration for it, paid our money for it, bought it for our own individual use.

Q. Is not that true in regard to the later lands described in the complaint which were bought by you and Kelly and Hiles or either of you?

A. Yes, sir.

Q. None of those lands were bought for the use of the company?

A. No, sir.

Q. Have you taken any land in the name of other persons?

A. I have not.

Q. Did not the road run over a large proportion of wild lands which were unoccupied?

A. Yes, sir; went through a large portion; a large distance of

the road was through a dense wilderness where there were no improvements whatever.

Q. Went over without first getting the right of way, did you not?

A. Yes, sir.

Q. Without making any connection and without stopping?

A. Oh, yes; the owners were not known. A great portion of them were living in different States.

Q. Didn't wait to get title—went on and took the lands?

A. Yes, sir; went on very rapidly.

Q. Expecting to pay for the lands when the proper time came, I suppose?

A. Yes, sir; built 110 miles there one summer—one season at least.

Q. Were there any instances in which the road was located upon lands owned by yourself or some one of you?

A. The road crosses some pieces that were bought by some of us.

Q. Is it not true that it did cross some lands owned by you near New London?

A. Yes, sir.

Q. Is there anything further that occurs to your own mind that you wish to testify to in your own behalf?

A. I don't think of anything.

Cross-examination:

Q. Mr. Ketchum, as to the Briggs land; did not the citizens in that neighborhood make a subscription to the road in addition—did not the citizens in that neighborhood make a subscription among themselves of about $500, in addition to what was paid by you, and pay that to Mr. Briggs in order to get the land?

192 A. I don't know whether they did or not.

Q. Don't you know that that was a part of the consideration for the land?

A. No; I think we paid the full value. That I stated to Mr. Briggs at the time that I thought it was more than the land worth. It was more than other State lands had been bought for at the same time and after that, right adjoining it; that I bought for ten shillings an acre, and that is a good deal more.

Q. Now, as to the Wood land. You say you made the negotiation with Mr. Wood and he wanted the county-seat at Manawa, and that you told him to make one conveyance to the road and one to Mr. Kelly. Is that so?

A. No, sir; I did not say so.

Q. Well, is that the fact?

A. I said that he did sign a contract for the right of way to the company before that.

Q. Did he except the land that he had contracted to convey for right of way, instead of to Mr. Kelly?

A. I think not. I think it was not excepted.

Q. Didn't except it?

A. I don't know whether it was or not. I think not, though.

Q. Now you negotiated it?

A. Yes, sir.

Q. Why did you not see that the right of way was excepted in the deed?

A. I don't know that it was not excepted, but my recollection is that it was not.

Q. You say that Mr. Marsh owned lands around there?

A. Mr. Marsh was a large owner in Fox river improvement land.

Q. In Manawa?

A. I don't know whether they are right at Manawa, because I do not know where all the Fox river lands were located. I think Mr. Marsh told me that he owned individually 115,000 acres through that country there, which was apportioned to him and deeded to him.

Q. You say Mr. Robbins conveyed eight acres do you, Mr. Ketchum?

A. I said that I was not positive whether he did convey more than the depot grounds or not.

Q. Did you negotiate with Mr. Robbins?

A. I was present at the time of the negotiation.

Q. Do you know how many deeds there were?

A. I am not sure whether, as I stated before I was not sure, but the Judge here stated that Mrs. Robbins swore that they gave eight acres—that is, they contributed eight acres, and said that there were three acres of it intended for the depot grounds, and five acres for Mr. Kelly.

Q. Why did not they make two deeds?

A. I think they did.

Q. Well, do you know anything about the other deed?

A. I don't. I only know that they talked of giving three acres to the railroad company—that is, for depot grounds. It was agreed upon at the time that the depot was to be located on a certain piece on their land. Whether it was given in two deeds or how it was I don't know—that is, I don't recollect.

Q. There seems to be one deed, Mr. Ketchum, from Dobbins and wife to David M. Kelly, for eight acres.

A. I don't know whether there was or not.

193 Q. If there was any other it was something outside of the eight acres, was it?

A. I don't know. I did not have anything to do with the deed.

Q. You did not see it at the time that they did deed it to the company?

A. No; I did not.

Q. Was that an oversight?

A. That was not—I don't know that it was an oversight.

Q. Let me ask some questions with regard to the Burdick land at Black creek. You say that if he conveyed a certain amount five acres was to go to Mr. Kelly?

A. I say I don't know as to that.

Q. Was you conducting the negotiations?

A. I said I was not conducting the negotiations.

Q. You did not get the right of way there?

A. No, sir; I think I did not get the right of way there.

Q. Do you know who did?

A. I think Mr. Abrams attended to that through there. That was east of New London. I said that I thought Mr. Abrams attended to the right of way east of New London.

Q. You were not the sole right of way agent?

A. This was prior. Mr. Abrams was, prior to my taking charge of the right of way west of New London.

Q. Was there any other deed made by Mr. Burdick besides this one from Mr. Randall and wife and Mr. Burdick and wife and Dorr Clark? Was there any other deed that you know of?

A. I said that I did not transact that business, and I don't know. Burdick swore that he deeded it to Mr.——

Q. Never mind what Mr. Burdick swore. I want to know if you know of any other deed.

(No answer.)

Q. You say that Mr. Kelly was not an officer of the company between 1870 and 1874?

A. No; I did not say so.

Q. Then I misunderstood you. Was he then an officer?

A. A part of 1870 he was an officer of the company.

Q. Between that date and 1874, was he?

A. My recollection is that he was the fore part of the year and that he resigned during that year in 1870, and from 1870 up to 1874 he was not an officer — up to April, 1874.

Q. Was he not acting as general superintendent under his contract?

A. No, sir.

Q. Do you know that he was not, Mr. Ketchum?

A. He was acting under the direction and authority of his contract.

Q. What was the nature of the management of the road under his contract?

A. It was under his contract.

Q. Did he not sign and send out annual passes during these periods?

A. Not to my knowledge.

Q. Do you know that he did not?

A. Well, I could not say that I knew.

Q. So you don't know anything about it?

A. Yes, I do know something about it. I signed the annual passes myself. I don't know anything about anybody else signing any.

Q. Did you sign the exchange pass to other roads of Dr. Wood, Mr. Ketchum?

A. Yes, sir.

Q. You signed them all, did you?

A. I have no recollection of anybody else signing any.

194 Q. How much did Mr. Kelly get for his conveyance of his lands at Arcadia he sold?

A. Well, as I said before, that was a purchase made with other lands.

Q. You don't know how much he got for it?

A. Well, it was not singled out to know how much that particular piece was. The consideration, of course, would have been small in proportion to the price of the whole.

Q. Who employed Martin Van Buren Bromley as right of way agent along the road?

A. Bromley never had charge of the right of way only under me.

Q. You employed him, then?

A. No, sir; and I do not know of his having procured a single piece of the right of way. He went out on the road sometimes. He went with me a few times, but I never knew of his closing up or of his being authorized to close up the right of way anywhere.

Q. He was only helping you, then?

A. That is all I know of his doing.

Q. How much did you pay him for helping you in that way?

A. I do not know; I do not remember.

Q. And did you make a deed purporting to be from Henry Ketchum and wife to David M. Kelly, dated the 30th of October, 1877, which I now hand you?

A. Well, I cannot say as to that. I did not sign that.

Q. Have you no such original with you, Mr. Ketchum?

A. I have not.

Q. Will you produce, on the hearing, the original deed of which that is a copy?

A. Well, I don't know whether I will or not.

Q. You have not got it, then?

A. It would not be in my possession; of course not.

Q. Did you ever make any such deed?

A. I don't know whether I did or not. I would not have the deed if I had given one to Mr. Kelly.

(Certified copy of deed of Henry Ketchum to David M. Kelly, dated the 30th of October, 1877, is here offered in evidence by complainant, and is marked "Exhibit 17.")

Defendants object to the deed being received in evidence as incompetent and immaterial.

The complainant makes demand upon Judge Ellis, attorney for David M. Kelly, and also upon Henry Ketchum personally, one of the defendants, for the production of the original deed upon the hearing, of which plaintiff now offers a certified copy.

Deposition of George Hiles.

GEORGE HILES, being called by the defendants and duly sworn, testified:

Examined by Judge POWERS:

Q. Where do you reside?

A. I reside in Dexterville, Wood county, Wisconsin.

Q. You are one of the defendants in this case?

A. I am.

Q. State whether in 1873 or at any other time you had anything to do with the construction of the Green Bay & Minnesota railroad.

195 A. In the summer of 1873 I constructed the Green Bay & Minnesota railroad from Grand Rapids to Dexterville.

Q. That is—what did you do?

A. I done the bridging, grading, and tying.

Q. You may go on. What else?

A. Also, William Dayton and myself constructed about 16 miles west of Dexterville. That was in the summer of 1872.

PLAINTIFF'S COUNSEL: State whether you know how many miles you constructed altogether.

A. How many I constructed myself, or how many I was interested in, one way or another?

PLAINTIFF'S COUNSEL: You, yourself, and Dayton and whatever other partner you may have had?

A. I was interested in the construction of something over 100 miles.

Q. By construction you mean grading, tying, and bridging?

A. Grading and tying some of it and some of it grading, tying, and bridging. The most of it was just tying and grading. The first 15 miles, as I stated it, I graded and bridged, and the next contract with Dayton I graded and tied only, and the next contract I was interested in Merrillon. That was in the summer of 1873, I was interested for myself and Dayton.

Q. And that was tying and grading, or was it only grading?

A. That was grading only. The last contract from Merrillan through to Winona was only grading.

Q. State whether any persons were interested in that work, except as you have already stated.

A. With me?

Q. Yes, sir.

A. No, sir.

Q. Did either of the defendants Kelly or Ketchum have any interest, either directly or indirectly, in that work?

A. In either of those contracts, they did not.

Q. State whether one or both of these defendants were at any time partners with you in any business—that is, business appertaining to the railroad.

A. No, sir; nothing more than we bought some land together in Wood county and Trempealeau county jointly.

Q. State whether you were at that time, or at any other time, an officer of the Green Bay & Lake Pepin railroad.

A. No, sir; I never was an officer of any kind.

Q. Not a member of the company in any way?

A. No, sir.

Q. Were you ever a stockholder?

A. I took some stock on the first contract from Grand Rapids through to Dexterville.

Q. Part payment for the contract?

A. In part payment for the contract.

Q. State whether you were in the employ at that time, or any other time, of the railroad, except in this work of construction under the contracts.

A. No, sir. I never was no further than that whilst I was working for Hiles and Dayton—that is, my son and William Dayton—constructing the railroad from Merrillon through to Winona, I assisted in three or four cases in obtaining permission to cross over lands belonging to parties where they had laid an injunction on the road. Also I paid out money that I never received, and
196 also I was with the president of the road several times in looking up the best ground to locate.

Q. Well, were you for such services paid anything?

A. Nothing further than I was with Blair when he came through with Kelly. For such services I never was paid anything; no, sir.

Q. You never asked anything?

A. No, sir; not a cent.

Q. You purchased some land or an interest in some lands in Arcadia of one Briggs?

A. Yes, sir.

Q. Well, you may state the details of that transaction—what it all was about.

A. Ketchum made out the first contract with Briggs in regard to it. He also saw Briggs, and he told him the price of the land was $500. That was for the first purchase—I think it was 187 acres—about that. After that we bought 10 acres of Briggs; paid him $300 for the 10 acres.

Q. Making $800 in all?

A. Making $800 in all. When we came to run the line—the reason for buying 10 acres—it ran down so far toward where the railroad was located that it took up the place to put lumber, and we had to have it for a lumber yard, and consequently paid a big price for it.

Q. For whose benefit was this last purchase?

A. That was purchased for my benefit—that is, my interest in that.

Q. Who else was interested at that time?

A. Ketchum was interested with me, and also Kelly.

Q. For your interest in it who paid the consideration?

A. I paid my own money.

Q. You spoke of two purchases made of Briggs. One deed was finally delivered. Were they both included in one deed?

A. I think they were, sir.

Deed handed to witness.

Q. This was $800. That was the consideration as sold?

A. Yes, sir; it was a little short of 200 acres. There was a ten-acre lot besides the original purchase.

Q. Does that railroad cross the land purchased from Briggs?

A. Yes, sir; it runs through a portion of it.

Q. Is the depot at Arcadia located upon it?

A. Yes, sir; it is.

Q. State to your knowledge whether there was any other consideration given to Briggs for the sale of the land.

A. There never was any other consideration that I know of.

Q. Has Mr. Kelly an interest in that land now?

A. No, sir.

Q. What became of his interest?

A. I bought it out.

Q. In the deed from Briggs, as finally delivered, I think it ran to you and Ketchum, did it not?

A. Yes, sir; it did.

Q. State whether that is the deed. (Shows deed to witness.)

A. That is the deed.

DEFENDANTS' COUNSEL: I have another deed that in this connection I wish to offer—that is, I am willing to accept your copy as such rather than have the deed pass out of my control.

(It is agreed that the copy of said deed introduced by complainant may be used in place of leaving the original deed here.)

Judge ELLIS: What is the date of the deed?

A. The 20th of July, 1873.

DEFENDANTS' COUNSEL: In this connection there has been
197 introduced here on the part of the plaintiff a copy of another deed of Briggs to Hiles and Ketchum, dated the 20th of October, 1875. Please explain what that transaction was.

A. Well, in order to explain that fully, so that you will understand it, I will have to go back a little ways. At the time that we first bought these lands from Briggs the first $500 purchase was paid by Mr. Kelly, Ketchum, and Hiles, and the deed was made out to Kelly, Ketchum, and Hiles. The old deed was never put on record. In the meantime we had bought this other ten acres that is stated here in this deed from Briggs, and in the meantime I bought Kelly out, and when we came to get the deed for the ten acres it was mutually understood by the parties that I should surrender the original deed given to Kelly, Ketchum, and Hiles, make a new deed, and put in this ten acres, which was done; and then in regard to the other deed the railroad cut off some fractions and left some on one side and some on the other side of the railroad; that came to be the right of way; and some of this land belonged to Briggs and some belonged to Ketchum and Hiles; and I made a contract with Briggs, and I took what there was on one side and Ketchum and Hiles took what there was on the other side of the railroad, and I paid him $500. That——

Q. And then this deed of the 20th of October, 1875, was only for the exchange of lands, was it—the deed—that is, the $500 consideration?

A. Yes, sir; that was for the exchange of land; that was exchanging some lands that was in the original deed.

Q. At the time these lands were purchased this $800 that was paid for them was a full consideration, in your opinion?

A. It was every dollar they were worth at the time, and more too.

(Question and answer objected to.)

Q. Have you since made improvements on those lands?

A. Yes, sir.

Q. Well, you may state to what extent.

A. In the shape of buildings.

Q. And otherwise?

A. Yes, sir; I made improvements. I have built one brick building that cost $5,000, one brick building that cost $3,000, one hotel that cost $6,000, one dwelling-house that cost $1,000, one that cost $600, and office that cost $300; also, every rise that came in the river, these lands overflowed; I put up a dock or embankment, about 120 rods, that cost me $450.

Q. Any town plats laid out, streets, or anything of the kind?

A. Yes, sir; laid it out in town plats.

Q. How is the property considered now, as to value?

A. I would be glad to sell it now at 50 cents on the dollar of what it cost, — say nothing about the original purchase of the land.

Q. Well, is it worth—would it bring what the improvements originally cost?

A. No, sir; it will not. As I said before, it will not bring 50 cents on the dollar of the original cost of the improvements I put on it.

Q. Had the Arcadia Mineral Springs Company an interest in these lands?

A. Yes, sir; they own that land.

Q. It has been conveyed to them?

A. Yes, sir; it has been conveyed to the Mineral Springs Company.

PLAINTIFF'S COUNSEL: Have you the deed of conveyance here from you to the Arcadia Mineral Springs Company?

A. I guess not.

PLAINTIFF'S COUNSEL: You may look to see if those are the copies of them.

198 A. I don't know; I can't say; I don't know anything about it.

PLAINTIFF'S COUNSEL: We will ask Mr. Hiles that he produce on the hearing the original deeds made by him to the Arcadia Mineral Springs Company, so far as he can get them—so far as they are in his possession, if any there are—or otherwise we will introduce secondary evidence of them.

(See close of Mr. Hiles' testimony.)

PLAINTIFF'S COUNSEL: Do you represent the Arcadia Mineral Springs Company here?

Judge POWERS: So far as it is ready to be represented.

PLAINTIFF'S COUNSEL: I demand of you, then, as attorney for the Mineral Springs Company, that you produce the original deeds.

(Defendants' counsel consents that the plaintiff's counsel may use copies if they do not produce the original deeds on the hearing.)

Q. You may state whether this property at Arcadia—the right of way—has been conveyed to the company.

A. The right of way, 100 feet wide, has been conveyed to the railroad company by the Mineral Springs Company and also by me. I conveyed the right of way to the railroad company and gave them a deed.

Q. Then, so far as your interest or that of the Mineral Springs Company is concerned, that has been conveyed?

A. Yes, sir.

Q. You are interested, I believe, with the defendants Ketchum and Kelly in certain lands purchased from the State of Wisconsin, are you not?

A. Yes, sir.

Q. Who purchased these lands from the State? I mean those lands about Arcadia.

A. Mr. Ketchum purchased them.

Q. What interest did you have in that purchase when it was made?

A. I had one-third.

Q. Who furnished the money to make it?

A. I furnished one-third of the money.

Q. Whose money was it?

A. It belonged to me.

Q. The purchase, I understand, was made in the name of Mr. Ketchum?

A. Yes, sir.

Q. And he afterwards conveyed to your interest?

A. He did; yes, sir.

Q. You afterwards acquired——

A. We afterwards divided the land up, Ketchum and me, for I bought Kelly's interest out. We divided the land up, and he took a certain portion of it and gave me a deed of two-thirds and he took one-third; then I bought the one-third afterwards.

Q. All of Ketchum's third?

A. Yes, sir.

Q. Then at present you are the owner of the whole of it, are you?

A. Well, I believe the whole. Perhaps Ketchum owns one forty yet.

Q. State whether the railroad crosses any portion of the land.

A. Well, I can't say for certain whether it does or not, but it is my impression that it does run corner-ways across one forty.

Q. Across the corner of a forty, do you mean?

A. Across the corner of a forty. I am not certain about that.

Q. Well, has the right of way to that portion been conveyed to the road?

A. Yes, sir; it was intended to be conveyed to the road, if it has not been.

Q. If it has not been you are ready to do it?

A. Yes, sir; I intended to convey it to the road. I made
199 a trade with the receiver. I intended to have it conveyed to the road. If it ain't been done it can be done any time.

Q. You also conveyed an interest in the lands at the village of Blair obtained of one Thurston and Porter, have you not?

A. Yes, sir.

Q. You may go on and state the transaction whereby you became interested in those lands.

A. I went with Mr. Ketchum—I think it was on the 22d of August, 1873—to Mr. Thurston's house, in the village of Blair, and Thurston and Ketchum were talking about locating the depot. That was after the road was graded to Blair. Thurston was very desirous of having the depot located there at Blair, and there were arrangements made there that Thurston should deed forty acres to Ketchum, Kelly, and Hiles for the consideration that they should lay out a portion of it in town lots and establish a lumber yard and help build up a town at Blair.

Q. For that consideration he gave a deed, did he?

A. Yes, sir; that was the consideration that he gave a deed on.

Q. Was that agreement with Thurston carried out—that is, as to putting up lumber yards, etc.?

A. Yes, sir; it was. The town was platted out, a lumber yard established and maintained there, buildings put up, sheds, and lumber office.

Q. What do you know, if anything, about Thurston having obtained a railroad pass?

A. I know of Ketchum's giving him a pass before he left there after the deed was made. Ketchum gave him a pass.

Q. Was there anything said about pass or passes prior to completing the trade, to your knowledge?

A. Not one single word, that I heard There was no pass in consideration in the trade. The consideration of the trade was just what I have told you.

Q. You may state how it was regarding the Porter matter.

A. Well, the Porter matter was just the same as the Thurston. Porter had a farm right adjoining there, and Porter gave, I think, about seventeen acres. There was a piece of land that was cut off. It was a piece that was cut off by the railroad. His land all lay on one side of the railroad without this tract of seventeen acres, including the right of way.

Q. What is the consideration of the Porter deed?

A. The consideration was that we should establish a lumber yard there and assist about building up the town.

Q. Were the two trades made at the same time?

A. Yes, sir.

Q. Were Thurston and Porter present when you made them? Was that talked up together?

A. Yes, sir; they were.

Q. State whether, in your judgment, for the convenience of the people, it was a proper place to locate it where it was located.

A. Yes, sir; it was the best place—the best point that it could have been located at in the town of Preston—there where Blair is now.

Q. This Blair is the name of the village, is it?

A. Yes, sir.

Q. And Preston is the name of the town in which the village of Blair is situated?

A. Yes, sir.

Q. You may state whether the right of way across this piece of land has been conveyed to the railroad.

A. It has; yes, sir.

Q. That is, so far as you are interested?

A. Yes, sir; they have been conveyed, as far as I am interested or concerned and as far as the Mineral Springs Company's interest is concerned.

200

Q. You may state whether these are the deeds—the one from Thurston to the defendants and the one from Porter.

(Showing deeds to witness.)

Judge ELLIS: What is the date of the Porter deed and the Thurston deed?

A. 22d day of August, 1873; "Ex. 15," "Ex. 8;" Thurston.

Q. And the other one?

A. Same date.

Judge ELLIS: They are copies of them. I suppose it is the same deed. They seem to be marked on the back.

Judge POWERS: I wish to offer these in the same way.

(It is agreed that the copies of these deeds may be used on the hearing.)

Mr. LARNED: You may state whether at any time you ever had any control over the affairs of the Green Bay & Minnesota Railroad Company.

A. In what way?

Q. Well, in any way.

A. Nothing more than the construction according to contracts.

Q. Nothing further than acting under the contracts you had taken?

A. I will state right here that I never was a partner of Mr. Kelly's nor Ketchum's in any construction in any job, in any construction of the Green Bay & Minnesota railroad, and I never was an officer of the company. I never had no control of their business in any way.

Q. Did you ever have any control of their funds—handle their money, or anything of that kind?

A. No, sir.

Q. You may state what was the consideration for the conveying of these lands to the Arcadia Mineral Springs Company—actual consideration. Was it money?

A. Conveying to the Mineral Springs Company?

Q. Yes, sir.

A. It was in stock.

Q. Was there any other consideration that you received from that company for those lands paid in the stock of the company?

A. Yes, sir.

Q. What is the value of that stock at that time or at any time subsequent? Is it worth par, or how is it?

A. Well, it really is of no value. It may be worth five cents on the dollar. I don't think it would bring ten cents on the dollar. I don't think it would sell for five cents on the dollar.

Judge ELLIS: What was it worth then?

A. About the same as it is now.

Q. Is it worth more than the land will bring—will it bring more than the land is worth?

A. That is just exactly what it is worth—what the land will bring in money.

Q. What were the lands worth at the time you so conveyed them?

A. Well, the lands and the improvements, you mean?

Q. Well, first, the lands, independent of the improvements you had made?

A. There are no lands at Arcadia, outside of improvements
201 on them, that the Mineral Springs Company owns or has an interest in to-day that will bring four dollars an acre, take it outside of improvements. There is not any lands there that I transferred to the Mineral Springs Company that we bought from Briggs, outside the improvements, you understand me, that is worth or will bring four dollars an acre to-day.

Q. You stated how many acres were conveyed to the Mineral Springs Company; the full amount of it; about 200 acres, is it?

A. Yes, sir.

Q. Is there anything else that you wish to state on your own part?

A. Nothing further that I think of.

Judge ELLIS: You said that you had conveyed or intended to convey the right of way to the company and made a trade with the receiver. State what the trade was.

A. I sold him the land.

Q. What land was that?

A. I sold him the right of way. He had some stock in the Mineral Springs Company—the receiver did. He was entitled to some for shipping some—for some work he done shipping some lumber for the Mineral Springs Company—and that was taken into consideration as a part; that was a part of the consideration. I sold them my interest to the right of way through Wood county; that was the balance of it, this Arcadia land and that land up there at Blair.

Q. Lands at Arcadia and Blair?

A. Yes, sir.

Q. You don't mean to say that you owned all the lands covered by the right of way through that county?

A. At Arcadia and at Blair; only those two places; that is all.

Q. Only those two places?

A. That is all.

Q. How many lands did you have in Wood county over which you sold the right of way?

A. Well, my impression is now that I was interested in from 9 to 11 miles.

Q. 9 to 11 miles?

A. Yes, sir; I don't remember. It was a large amount that I was interested in directly or indirectly.

Judge ELLIS: And what did the receiver give to you?

A. He had a claim of $1,200 on some land in Wood county; he gave up that; and he had some stock in the Mineral Springs Company; he surrendered that claim, $1,300 besides.

Q. What was the amount of the whole consideration in full?

A. Something over $3,000.

Q. You say you are not in partnership with Ketchum or Kelly on any contracts?

A. I have said so; yes, sir.

Q. Were you in partnership with them in the purchase of those lands along the line of the railroad?

A. We purchased the land—that is, I got in common an interest with them.

Q. There was no partnership agreement?

A. No partnership agreement; nothing more than we three would go and purchase from the Government one thousand acres of land and each one put in the three amounts in money that would make the amount.

Q. That was the only arrangement there was?

A. Yes, sir.

202 Q. You said you were not in partnership with Ketchum or Kelly on any of the contracts?

A. I said so; yes, sir.

Q. Were you in partnership with them in the purchase of the lands all along the line of the road?

A. We purchased the land; yes, sir. I owned in common an interest with them.

Q. There was no partnership agreement?

A. No partnership agreement, any more than this: We three would go and purchase from the Government a thousand acres of land and each one of us would put in the three amounts of money that would make the amount.

Q. That was the only arrangement there was?

A. That is all.

Cross-examination:

Q. When you sent the stock of the Mineral Springs Company to the receiver did he not send it back to you?

A. Yes, sir.

Q. You say that the trade with the receiver that you alluded to was for about 11 miles?

A. I said I did not know; 9 or 11 miles it may be.

Q. How many miles is the right of way through this land at Arcadia and Blair?

A. I could not say how far it was; well, possibly it may be a mile.

Q. Not quite, is it?

A. I can't say. I have no means for saying exactly.

Q. You say the receiver had a claim on some of this land. What was that? A sheriff's deed?

A. Well, there was a claim against the Wisconsin Manufacturing and Boom Company, the Dexterville Manufacturing and Boom Company, by one of its officers. There was a lot of this land sold upon the line of the road, as I understand; the receiver bid it in; that was his claim.

Q. How many other stockholders are there besides you in the Arcadia Company?

A. Well, there are three.

Q. Who are they, please?

A. There is myself, Hiles, my wife, E. Knight, and my son.

Q. How much stock was there issued?

A. Well, I don't know as I could tell now how much. I think $75,000.

Q. Where is the hotel located that you put up?

A. It is located—the one we have there now?

Q. Yes, sir.

A. It is located on some land we bought from Briggs.

Q. Well, I know that very well. How near the depot is it located?

A. It is located about 60 feet off the depot.

Q. At the back of the depot?

A. Yes, sir.

Q. About 60 feet?

A. Yes, sir.

Q. How large a building is that hotel?

A. Well, let me see. The main part of it is, I think, 34 by 40 or 44.

Q. Has the hotel got a piazza on the depot side?

A. Yes, sir.

Q. What is the distance between the outer edge of the depot platform and the outer edge of the hotel piazza?

A. Well, probably forty or fifty feet.

Q. You are just as sure of that as of anything you have sworn to?

203 A. No; I ain't as sure of that; and things that I have sworn to here I know to be certainly so, and that I don't know to be certainly so; not until I put a line on it.

Q. Will you swear it is over ten feet between them?

(No answer.)

Q. Fifteen feet?

A. Yes, sir.

Q. Twenty feet?

A. Yes, sir.

Q. Twenty-five feet?

A. Yes, sir; I will swear that I think it is about thirty feet.

Q. Are there any warehouses of the railroad in use by them on that land you bought of Briggs?

A. Used by the railroad?
Q. Yes, sir.
A. No, sir.
Q. There are, are not there?
A. Not used by the railroad company.
Q. Well, used by shippers on the road?
A. Yes, sir; there is one warehouse used by shippers on the road.
Q. Only one?
A. That is all.
Q. Who built it?
A. Charlie Miller built it.
Q. Whom does it belong to?
A. It belongs to T—— and Miller.
Q. Did you ever tell him to get that warehouse off there?
A. I told him I wanted to have him pay me ground rent.
Q. What is that warehouse used for?
A. Well, it is used—I don't know what they are using it for now. They have heretofore used it for shipping wheat.
Q. A side track down to it?
A. Yes, sir.
Q. Was that on the land from Briggs—conveyed from Briggs—the side track?
A. It is; yes, sir.
Q. Only one warehouse?
A. Yes, sir; all that is used.
Q. Is there no other one that is used?
A. There is one there that I built myself.
Q. Where is that?
A. That stands close to Miller's.
Q. Has that ever been used?
A. It has been used.
Q. What for?
A. Shipping wheat.
Q. A side track down to that?
A. Yes, sir.
DEFENDANTS' COUNSEL: Is there only one side track?
A. One side track; two warehouses.
Q. You say that you had a contract for grading. How much money was there paid on that contract—on all the contracts? The first fifteen miles contract and the second contract and the contract from Merrillon to Winona—how much money was paid altogether on those contracts?
A. I have got no way now to tell the exact amount of money.
Q. Give me an approximate.
A. I can give you something of an idea how much was paid on it. The contracts from Dexterville to Grand Rapids, there must have been about—I had the contract there, you understand—grading, tying and bridging.
Q. Yes, sir; I understand.
A. There must have been about $450,000 in money.
Q. Is that the full contract price?

A. No; I got, I think, it was either nine or fourteen thousand dollars in stock; took that the same as money.

Q. The contract price was $54,000 or $56,000?

A. Somewhere along there; from $55,000 to $56,000.

204 Q. How much money was paid, or other consideration, on the other grading that you speak of?

A. The other what?

Q. The grading on the other part of the road besides this fifteen miles. How much money was paid on that?

A. Well, I should say somewhere from $50,000 to $60,000.

Q. That was paid to Hiles and Dayton, was it?

A. That was paid to Hiles and Dayton, what was paid; some of it is not paid yet.

Q. Some due on that, is there?

A. Yes, sir.

Q. How much?

A. Well, I think the balance something less than $3,000.

Q. All the rest was paid?

A. Yes, sir.

Q. In money?

A. Yes, sir; it was paid in money.

Q. Did you have any other contract besides these two for $100,000? Did you have other interest except in those contracts?

A. There was three of them altogether.

Q. Well, what was paid on the third one?

A. He paid the last two in money.

Q. That was all the money that was contracted to be paid to Hiles and Dayton for grading?

A. I won't say that was all the money. As nearly as I can remember, without some means of refreshing my memory, I should say about that. It won't vary much.

Q. Any more than $5,000 or $10,000?

A. I guess not.

Q. Who paid you the money on those contracts?

A. Well, Mr. Kelly paid it to me.

Q. Mr. Kelly paid it to you?

A. Yes, sir.

Q. Then you are willing to deny Mr. Kelly's statement that he made here that he never paid you any?

A. My understanding is that it came from Mr. Kelly.

Q. Whose check was it?

A. It seems to me it was the company's check. It was the company's check or Kelly's, I cannot say for certain.

Q. Who was that contract with?

A. I always understood it was with Mr. Kelly.

Q. Didn't you have a written contract?

A. Yes, sir.

Q. Have you got it here?

A. No.

Q. Will you produce it on the hearing?

A. I will if I can; yes, sir. Whether it is signed by Mr. Kelly or whether it is signed by the company I would not say. You see it is something I never thought about.

Counsel for the plaintiff demands that the original contracts referred to by the witness, as to grading, tying, bridging, shall be produced upon the hearing of this cause and used in connection with the testimony.

Q. Well, now, don't you know, as a matter of fact, that Mr. Kelly was correct when he said——

A. Don't I know what?

Q. As a matter of fact, that Mr. Kelly has sworn truly when he said that your contracts for grading were with the company and not with him?

A. My understanding was that Mr. Kelly was doing that work; that was my understanding.

Q. Yes; O, yes; but you don't know, do you, Mr. Hiles?
205 You are not willing to swear that that contract was made with you by Mr. Kelly? You won't swear to that, will you?

A. No; I won't swear to that; Mr. Kelly signed the contract.

Q. Have you ever filed a petition or other proceeding against the railroad company to recover the amount due on that contract for grading?

A. Well, those acceptances (?) of the balances that was due is now in the hands of Mr. Huntingdon, of Green Bay.

Q. Well, what has he done in regard to it?

A. In the first place I gave the acceptance to Mr. Norris.

Q. Noyes, of Dixon & Noyes?

A. The firm of Chynoweth & Norris, of Green Bay. Now, what proceeding he has taken in the matter I am unable to say. I don't know what he has done with them.

Q. Well, Mr. Hiles, were not those acceptances that you speak of, that you sent to Mr. Huntingdon for collection, were not they given to you by the railroad company?

A. Yes, sir; I think they were given to me a short ttme before they went into the hands of a receiver; probably not more than two months.

Q. By the railroad company?

A. Yes, sir.

Q. Did you ever ask the receiver to pay them?

A. Yes, sir.

Q. Never asked Mr. Kelly to pay them, did you?

A. No.

Q. Did you convey your interest in the Arcadia Mineral Spring Company's land to that company before the commencement of the suit, Mr. Hiles, or after it?

A. Before.

Q. You say 200 acres of land were conveyed to you by the Arcadia Mineral Spring Company. How many acres are improved and how many unimproved?

A. There is none of it improved, only this that has got buildings on.

Q. Well, I know.

A. I gave you a statement here of that.

Q. You stated how many buildings you had put up; you did not say how much ground they covered.

A. Well, they probably did not cover to exceed, the whole of them, any more than two or three acres--three or four acres.

Q. Are there no other buildings except those you put up?

A. Yes, sir.

Q. Who put up those?

A. One party and another.

Q. To whom you had sold land?

A. Yes, sir.

Q. How many buildings were so put up?

A. I can't say how many, but perhaps 40; perhaps 30.

Q. You sold as many as 40 lots, then, did you?

A. Thirty lots, any way.

Q. How much consideration did you get for those lots?

A. Well, all the way; the most of them was $50.

Q. $50 a lot?

A. Yes, sir.

Q. How much in a lot?

A. The lots are 100 feet there; they are four rods by eight, most of them.

Q. Four rods by eight?

A. That is, 100 feet by sixty.

Q. Sixty?

A. Yes, sir; by 120.

Q. How many of those lots in an acre?

A. You can figure them up as well as I can.

Q. Well, can you tell me?

A. I should say 34 of them.

206 Q. Do you think you can sell any other lots there at the same rate?

A. Now?

Q. Yes, sir.

A. No; the balance of them that ain't sold have gone back for taxes; they ain't worth paying taxes on.

Q. Well, suppose the titles are good, can you sell any more at the same rate?

A. No, sir.

Q. Why not?

A. Because they ain't worth it. Now and then you will sell a lot, for example, but they can't be sold for any particular price; there is no sale.

Q. When did your sales stop? You sold 40 lots, you say?

A. I said three or four years ago.

Q. Why did it stop?

A. There was no demand.

Q. Did the demand stop suddenly?

A. Well, yes, sir.
Q. Why?
A. Why?
Q. Yes, sir.
A. Several reasons why.
Q. Well, give me one.
A. Well, within the last three years they have alleged one reason—now, I don't know, only that it is alleged—that the railroad carries wheat that properly belongs to Arcadia from Fountain City to Green Bay just the same as they will carry it from Green Bay or from Arcadia to Green Bay, while you have got to go down the river twenty miles before they get to Arcadia; consequently they claim—that is what the wheat buyers claim. Therefore there are no sales of land in Arcadia; that would have a tendency to take business away from the town.
Q. Did you sell any of those lots to wheat buyers—to shippers?
A. Well, not necessarily.
Q. Did you, as a matter of fact, sell one of them to a wheat buyer?
A. Well, I don't remember as I did.
Q. Then what reason would prevent you selling some more to the same kind of people you sold those forty to?
A. The country is built up, you understand, on their product.
Q. Doubtless.
A. Well, that country, the product of that country, is wheat. You take the wheat from any town, you might just as well burn the town up; it leaves the town perfectly bare and valueless.
Q. You say there is a wheat warehouse in Arcadia?
A. Yes, sir.
Q. Is not that in use?
A. Yes, sir; there are two warehouses that are more or less in use.
Q. Pretty large shipping town, is it not?
A. Yes, sir; shipping from there.
Q. Did you sell all the best lots?
A. Yes, sir.
Q. Now, have you not received as high a price for a lot in Arcadia as $500?
A. No, sir.
Q. Not in any single case?
A. No case that I know of.
Q. Is $50 the highest price you ever got for a lot?
A. I don't remember.
Q. What is the highest?
A. One or two for $200.
Q. Did you sell any lots for $200?
A. Well, I don't remember.
Q. Did you sell any lots for $400?
A. Not that I remember.
Q. Or between $400 and $500?
207 A. There was one lot sold somewhere—a fraction of a lot sold—for something over $250.

Q. How many lots have you sold for over $200?

A. Well, I don't think we have sold more than one for over $200 that I know anything about.

Q. You said you had sold one for $250 and one for $350. Did not you say that?

A. No; I don't think there has ever been over one sold.

Q. And none sold for $200 or $250?

A. No; I said that one of them probably sold for $100 and over, and one probably sold for $100; I think, $250.

Q. Mr. Hiles, when a certain party came to you asking for lots at Arcadia did not you ask him $1,000 for two lots?

(Objected to.)

A. I don't remember of asking him a thousand or five thousand.

Q. Will you swear that you did not?

A. Well, I won't swear that I did not. If I did it was a joke.

Redirect examination:

Q. You spoke about receiving $50,000 in money for work on railroad contracts?

A. Yes, sir.

Q. Whose money was that?

A. Well, I am unable to say.

Q. Don't know whether it came from the treasury of the company or from Mr. Kelly?

A. Well, it might be the case, but my understanding always has been that it was Mr. Kelly's; that he was doing that business.

Q. You said that you didn't know but it came from the treasury of the company?

A. Yes, sir; I think it did come from the treasury of the company.

Q. You think it did?

A. Yes, sir.

Q. Then you don't know whether it was Mr. Kelly's money or the company's?

A. I don't.

The taking of testimony was here suspended, to be resumed by the defense within the time limited by the order of the court, the 10th of November, upon five days' notice to the complainant, the complainant to have the privilege at the time thus fixed to take the testimony of Catharine Davy, the order in which this testimony shall be taken to be in the discretion of the examiner.

(Certified copies of deeds from Hiles to the Mineral Springs Company produced by defendant and marked, respectively, "Exhibits 18, 19, 20, 21, 22.")

Nov. 30TH, 1880.

Present: Judge Ellis, for defendants, pursuant to notice to resume defendants' testimony, proof of service of which is now filed.

Upon the application of plaintiff's counsel, made through the mail in advance of the time fixed for the hearing and placed upon the files, the taking of defendants' testimony noticed for to-day is ad-

journed to the 11th of December, at two o'clock p. m., upon condition that the complainant shall pay the expenses of the witness, T. H. Earle, attending for examination at such time, but the direct examination of the witness may now be taken by the defendants' counsel provisionally—that is, upon this condition: If the complainant consents thereto and waives a cross-examination the testimony of the witness shall be returned as part of the defendants' case,
208 or the complainant may require the examination to be taken *de novo* on the adjourned day, December 11th, 1880, or may permit the direct examination to stand as now recorded and cross-examine the witness on that day. The order requiring the payment of the expenses of the witness is made upon the representation of Judge Ellis, counsel for defendants, that he had not time after receiving the application of complainant's counsel for an adjournment to notify the witness not to attend.

It is further ordered that the complainant's counsel, within five days after the service upon them of a copy of this order and of the testimony of said witness so taken provisionally, pay to Judge Ellis, the defendants' counsel, the sum of $25 to cover the expenses of the attendance of said witness on said adjourned day.

It is further ordered that the time within which the complainant shall take *their* rebutting testimony shall commence from this day, the testimony of the defendants being now considered closed, and the further examination of the witness, T. H. Earle, under this order to be considered as taken on this day.

Deposition of Theodore H. Earle.

THEODORE H. EARLE, called by defendants, being sworn, testified:

Q. Where do you reside?

A. Whitehall, Trempealeau county, Wisconsin.

Q. Do you remember a contract for the conveyance of a tract of land by David W. Wade to Henry Ketchum and David M. Kelly, or either of them, in 1873?

A. Yes, sir; I wrote a contract in the month of October, 1873, from D. W. Wade to Henry Ketchum.

Q. Were you present at the making of that contract?

A. I was.

Q. You may state what the agreement was between the parties in regard to the purchase of the land.

A. Ketchum and I went to him first together, and talked to him concerning the purchase of what land he had there—seven forties—but closed no bargain. Some time afterwards—I don't know how long—I went there myself alone; made a contract with him for the purchase of that seven forties for the sum of thirty-five hundred dollars. I at that time paid him down one hundred dollars. I think it was two hundred dollars, but $100 I am sure; stipulated in the contract—I can't state just how now—it should be paid. The contract was made for and in behalf of Henry Ketchum and nobody else. According to the terms of the contract, at a given time I paid him a certain amount of money, which I got from Mr. Ketchum, and

took a deed of the property afterwards, according to the terms of the contract. I fulfilled the contract for Ketchum and took a deed, then executed a mortgage, or had Mr. Ketchum execute one, to Mr. Wade on a certain portion of the property—not on all, for the reason we could not dispose of the property—could not give a good title while the mortgage remained on it. I paid every dollar that was paid on the property, to the amount of $3,500 and interest. I paid all at different times, and paid it out of Ketchum's property or money. I could not definitely state just how much I paid in lumber. I should say from five hundred to one thousand dollars of it was in lumber.

209 Q. State whether or not that contract and deed was in any respect for the benefit of the railroad company, or whether it was an individual transaction with Ketchum and Wade.

A. It was an individual matter with Wade; the company had nothing whatever to do with it in any talk we had.

Q. Was there any contract or deed made to the railroad company, that you know of, of that land or any part of it?

A. No, sir.

Q. Mr. Wade testified that the depot was located on the land soon after the contract was made. Will you state how much land was occupied by the depot?

A. It was left unplatted by order of Ketchum, a strip one hundred feet wide—that is, fifty feet each side of the main track—and all between that and the side track and fifty feet from the center of the side track still beyond.

Q. Aside from the one-hundred-feet strip, how much land was there occupied by the railroad company?

A. There was about two hundred and seventy thousand square feet left for that purpose. The depot did not occupy that. Between the tracks and on each side of the track there was left so many square feet, one hundred and fifty feet wide and eighteen hundred feet long.

Q. Was any part of that land which was purchased by Ketchum necessary for the use of the railroad company, except what the company occupied for its track and depot grounds?

A. No, sir.

Q. What was the land worth at the time it was purchased by Ketchum?

A. It cost him about three dollars an acre.

Q. What was the land worth?

A. It was not worth over thirty-five hundred dollars; I would not give over thirty-five hundred dollars for it to-day.

Q. Is there anything else that you know respecting that purchase by Ketchum from Wade?

A. Anything bearing upon this question?

Q. Yes, sir. A portion of that land was platted, was it not?

A. Yes, sir.

Q. Who platted it?

A. Mr. Ketchum.

Q. What is the name of the plat?

A. Village of New Whitehall—Ketchum's Plat of the Village of New Whitehall.

Q. Do you know anything about any offer being made by Mr. Wade to give the company forty acres of land there?

A. I don't know that he offered anything of the kind.

Q. Was there anything said about it that you know of?

A. I don't think there was, for the whole matter was either talked of in my presence or through me for Mr. Ketchum.

Q. Did he ever make any offer of that kind to you?

A. He never did.

Q. Was there anything said or done by Mr. Wade with you on behalf of Ketchum with respect to the sale or donation of any land at Whitehall to the railroad company?

A. No, sir; there was not.

Q. State what you know about the property at Manawa.

A. All I know with reference to that is that it was deeded
210 by Dr. Wood. I was present or went with Mr. Ketchum two different times to see Dr. Wood with reference to property there at Manawa. The first time we were there there was talk concerning money or bonds to be given the railroad company and land to Mr. Kelly. I particularly remember that the land was purchased for Mr. Kelly, for the reason that the evidence, or rather the reasons put forth by Ketchum to induce him to give a portion of the land to Mr. Kelly, were that it would be better for him to own a portion with Mr. Kelly interested with him than to own the whole; that his influence in building up a town would be worth more to him than the amount of land he would give Mr. Kelly. I do not remember whether a contract was closed at that time or not. I know that the second time when we were there there were twenty or forty acres more deeded to Mr. Kelly than was included in our first talk or contract, whichever it might have been.

Q. Was any land sold by him to the company?

A. Not to my knowledge.

Q. Was there any to Ketchum or Kelly?

A. There was to Kelly.

Q. How much?

A. I could not be definite about that matter, because I have not had my attention called to it from that time to this. I do not remember the amount of land conveyed or contracted for, but it was the amount that was finally conveyed, less either twenty or forty acres.

Q. Were you present when Dr. Wood agreed to convey the land?

A. I think I was present when he conveyed and when he agreed to convey, both.

Q. State whether or not it was an individual transaction or a transaction on the part of Dr. Wood for the benefit of the railroad company.

A. It was an individual transaction; solely individual.

(Defendants rest.)

JANUARY 5, 1881.

The parties appear pursuant to notice from the complainant to take its rebutting testimony.

Present: The complainant, by its counsel, E. C. and W. C. Larned and Theodore G. Case; the defendant Kelly, by Judge Ellis and H. M. Finch, also in person; the defendant Ketchum, in person, accompanied by his counsel, Judge Ellis; the defendant Hiles, by his counsel, Judge Powers.

Deposition of William J. Abrams.

The complainant calls WILLIAM J. ABRAMS, who, being sworn, testified as follows:

Q. What is your name?
A. W. J. Abrams.
Q. First name?
A. William.
Q. Are you of lawful age—over 21?
A. Yes, sir.
Q. What is your occupation?
A. I am taking care of some property I own, and occasionally work at one thing and another that offers.
Q. Have you ever been connected with the Green Bay & Minnesota Railroad Company?
A. Yes, sir.
Q. Did you act as freight agent of the Green Bay & Minnesota Railroad Company and make contracts for freight at any time?
A. No, sir.
211 Q. Were you connected with the Green Bay & Minnesota railroad at any time?
A. Yes, sir.
Q. Had you anything to do with getting up the right of way of that road, getting contracts of right of way, when it was built?
A. Yes, sir.
Q. What time was that?
A. In 1870; I think I took some deeds in 1871.
Q. What position did you hold in the company at that time?
A. I acted as paymaster, and was general man along the line of the road—anything that (was) required to be done.
Q. You were director at that time?
A. Yes, sir.
Q. Did you ever know one H. Robbins?
A. Yes, sir.
Q. Did you ever know one Sally Munger?
A. Yes, sir.
Q. Were you present at any time when any arrangement was made with these parties for the transfer of land to the railroad company or any other parties?
A. Yes, sir.
Q. Where was that land?
A. It was land in the town of Seymour.

Q. Is that the land which has already been testified to in this case?

A. Yes, sir.

Q. Did they give that land without any consideration?

(Objected to as not rebutting and leading.)

A. They agreed to give it; yes, sir.

Q. They agreed to give it without consideration, did they?

A. Well, the consideration that a depot should be put near their land or on some of their land.

Q. To whom did they give that land?

A. They gave it to the Green Bay & Lake Pepin Railroad Company.

(Objected to as not rebutting and incompetent and the deed is the better evidence.)

WITNESS: Or agreed to give, for I did not take the deeds.

Q. Did you know at the time of these negotiations whether or not the title was being taken to these lands in the name of Mr. Kelly?

(Same objection.)

A. I did not.

Q. It has been testified here (I think you were not present) in the testimony which has been given for the defendants that there was an understanding between the Green Bay Company and Mr. Kelly—who had, as he stated, a contract to build the railroad—that he was to have donations of land along the line of the Green Bay road in addition to whatever compensation he was to receive under that contract for building the road. Now, I will ask you whether any such arrangement as that was made with Mr. Kelly?

(Objected to as not rebutting and incompetent.)

A. I do not know of any.

Q. Were you a director of the road at that time?

A. Yes, sir.

Q. Was any such resolution passed at any board of directors' meeting that you were present at?

(Same objection.)

A. Nothing that I know of, except ratifying the contracts he had for construction of the road.

Q. There was no arrangement for compensation outside of the contracts, that you know of?

A. No, sir.

Q. Were you present at the trustees' meetings during that time?

A. Most of the time; yes, sir.

Q. Was the line of the Green Bay & Minnesota railroad surveyed to the Mississippi river before D. M. Kelly became a director of the road?

212 A. Yes, sir.

Q. To what point on the Mississipppi river was that surveyed at that time?

A. Opposite to Wabasha.
Q. Was the line built to that point?
A. No, sir.
Q. Where was it built to?
A. There was no line built.
Q. Afterwards, I mean?
A. No, sir.
Q. Where was it built to?
A. Winona.
Q. Who changed the location of it?
A. I suppose Mr. Kelly and, as I understood, some parties in New York that Mr. Kelly represented desired it to be changed.
Q. Was it changed after Mr. Kelly became a director?
A. Yes, sir.
Q. It has been testified here in the testimony for the defendants that certain land was bought at Manawa for the benefit of certain individuals, as stated in that testimony, and that more was bought there than was needed for railroad purposes. I want to ask you whether any land has been bought by you for the company at Manawa for any purpose since that time; and, if so, what?
A. I bought some last summer for gravel purposes for the receiver.
Q. How much did you buy?

(Objected to as incompetent.)

A. Three and one-half or four acres. I could not tell exactly the number of feet. The deed calls for three and one-half acres.
Q. Was there any gravel or gravel pit upon the land which was bought from or donated by Dr. Wood?
A. Yes, sir.
Q. Was that necessary for the use of the company—the Green Bay road?
A. I considered it so—the company did.

(Objected to as incompetent; the witness has not been shown to be an expert nor a proper judge of such matters.)

Q. How long have you been connected with railroading?
A. I have been connected with the Green Bay & Minnesota road since it first got its charter; before that, in 1856, I was connected with a railroad; since 1856.
Q. You think yourself (competent) of forming a judgment as to what amount of land is necessary for railroad purposes?
A. Yes, sir.
Q. Did you ever buy any land for the use of the Green Bay road of Mrs. Davy?

(Same objection.)

—. ——.

Q. For what purpose?

(Same objection.)

A. For gravel pit.

Q. Where was that located?

A. Adjoining the land that Dr. Wood donated; part of the same pit.

Q. How many acres were there in that land?

A. One and one-half acres.

Q. Was there any land bought of Mrs. Davy or donated by her in the neighborhood of this land you have just spoken of that you bought for the company that stood in the name of Kelly?

A. Yes, sir.

Q. Could or could not that land have been used by the railroad company for the purposes of a gravel pit?

(Objected to as incompetent.)

A. Yes, sir.

Q. Did you ever have any conversations with Mrs. Davy with reference to her transfer of the land which has been spoken of by you?

A. Yes, sir.

Q. Did she or did she not in such conversations state to you that she intended to convey said lands to the railroad company?

213 (Objected to as incompetent, leading, and not rebuttal.)

A. She said to me that she gave the right of way, and that Mr. Ketchum bought for the company two or three acres more.

Q. Ketchum or Kelly?

A. Mr. Ketchum bought for the company.

Q. Did she state to whom she made the deed?

A. She said she made it to the railroad company, and that she wanted the railroad company to pay for an extra piece that Ketchum put in the deed that did not belong to it.

Q. Was any such deed on file in the company's office among its papers?

A. Not that I know of.

Q. Have you in your possession as an officer of the railroad company any contracts made with Sally Munger or any other of these parties with reference to the conveyance of this land that has been testified here?

A. Yes, sir.

Q. Will you produce them?

(Witness produces deeds.)

Plaintiff's counsel offers in evidence the contract from Sally Munger, of the town of Seymour, county of Outagamie, in the State of Wisconsin, made with the Green Bay & Lake Pepin Railway Company, — the consideration of the sum of one dollar, for the conveyance of a strip of land one hundred feet in width along the line of their road as now located through the S. ½ of the N. E. ¼ of sec. 32, t'p 24, R. 18 E., and five acres additional if depot is located within one-quarter of a mile of said land; duly acknowledged.

Mr. LARNED: The stipulation is that we can keep the originals and introduce copies thereof.

EXAMINER: The stipulation is that the original papers are introduced. The examiner makes and returns copies with the record of testimony, the parties retaining the originals, but to be produced at the hearing if required.

Contract referred to marked "Exhibit No. 1 in Rebuttal."

DEFENDANTS' COUNSEL: Judge Ellis objects to the introduction of any contract or other papers in the case, because the time for the introduction of documentary evidence has expired under stipulations heretofore made in this case and by order of the commissioner. We also object to the introduction of this contract on the ground that it is not rebutting testimony; also as immaterial and incompetent.

PLAINTIFF'S COUNSEL: I introduce also in evidence same class of contract as the preceding exhibit, the parties to this contract being W. D. Jordan and wife and the Green Bay & Lake Pepin Railroad Company, premises being situated in the county of Outagamie, State of Wisconsin. The date is the 14th of July, A. D. 1870.

Same objection to this paper as to the last preceding.

Contract referred to marked "Exhibit No. 2 in Rebuttal."

Cross-examined by Mr. KELLY:

Plaintiff's counsel object to Mr. Kelly conducting the cross-examination of the witness as incompetent, he being represented by counsel in the case.

Q. How much right of way did you secure on the line of what is now known as the Green Bay & Minnesota railroad?

A. I secured contracts for about 35 miles.

Q. Where do they begin and where end?

214 A. It ended at New London; I will say about thirty miles. It commenced at Green Bay and ended at New London, with the exception of a few pieces that Mr. Ketchum sent for me to fix up after I had retired from getting right of way. That was at Northport and one other place.

Q. Then you testify that you secured the right of way for the first thirty miles?

A. No; I did not testify any such thing.

Q. Will you state what right of way you did secure?

A. About thirty miles intervening between Green Bay—contracts between Green Bay and New London. I did not designate any continuously; the first intervening 30 miles. I did not put it in that way at all.

Q. You say about thirty miles. Can you be more specific and state exactly how much right of way you obtained?

A. The best of my recollection is about thirty miles, and the 30 miles was this side of New London. I took the contracts for them. I wrote to you in New York and wanted you to advance the money to secure those, and you wrote back that you had not the money; so that went over, and afterwards a good deal of this right of way I

took the contracts for was sold to other parties—Darling & Wedge; the contracts I took.

Q. Let us understand correctly what you mean. Do you mean that you secured about 30 miles of the right of way east of New London?

A. Yes, sir; about 30 miles. I have not figured it up. I secured it by contract. I took contracts; I did not take deeds. I took deeds for a very little. After I went out to commence taking deeds Mr. Ketchum was placed in my stead to finish up the right of way. I didn't take any more.

Q. Did you secure any right of way west of the Wolf river?

A. Yes, sir.

Q. How much?

(Objected to on the ground of immateriality.)

A. I could not tell you; I secured several pieces. Fred. Stokes is one, and I can tell you others I have here; a good many of them—Stimpson, Swazing, Hoxie, Thompson, and Lyons. I have a good many of those. Mr. Ketchum went along with me, and he is a witness to most of those four or five miles east of New London.

Q. How far is it from Wolf river, at New London, to Chiocton?

A. About ten miles, I think.

Q. For how many miles out of that ten miles did you secure the right of way by contract?

A. I could not tell you; I never figured it up.

(Objected to as irrelevant.)

Q. Are not some of those contracts taken by you for land west of New London?

A. Not the village of New London—no, sir; the city of New London—that I know of.

Q. In your judgment, what proportion of the right of way of the ten miles between Chiocton and New London did you secure?

(Objected to as not proper cross-examination.)

A. I could not state. I never figured up how much across those forties there were.

215 Q. State to the best of your recollection and belief. Will you state, to the best of your recollection and belief, what proportion of the ten miles between Chiocton and New London you secured by contract?

A. I think about three miles.

Q. Then about three-tenths of the distance between Chiocton and New London?

A. I think so; about that; I would not state posjtively.

Q. What is the distance between Green Bay and Chiocton?

A. Thirty miles.

Q. For what proportion of that thirty miles does the road run through the Indian reservation?

A. Ten miles; that I was the direct means of securing; that is included in the 30 miles. When I said about 30 miles I included the

Indian reservation. It was got when I had charge of the right of way; ten miles through the Indian reservation.

Q. You say the right of way through the Indian reservation was secured while you had charge of the right of way?

A. Yes, sir.

Q. Do you mean to say that you secured it yourself—by your own personal efforts?

A. I didn't secure any single piece by my own personal efforts. It was under my charge and considered as secured by me—under my charge of the right of way. I settled with all the Indians, pretty nearly, for all their claims, all the way through, according to the resolution of Congress; settled with all of them, I think, for their personal damages.

Q. For what proportion of the thirty miles of right of way which you say you secured did you obtain deeds?

A. Very little of it, because I was removed from securing the right of way before a good many of the contracts—some of the contracts called that when depots were built or iron laid,—and I was removed before the commencement of the ironing.

Q. Do you not know, as a matter of fact, that nearly all the contracts for right of way secured by you were invalid for want of accuracy and non-conformity to the laws of the State?

A. No, sir.

Q. Don't you know, as a matter of fact, that some one else had to go over the entire ground and get up the right of way in a proper shape?

A. No, sir.

Q. At what time were the deeds made for this right of way?

A. The deeds—in 1870; and, I think, one or two in 1871. The deeds that I took were in accordance with the contracts I took, and nobody questioned them. The deeds of Sally Munger and Jordan, for nearly three miles of right of way; in accordance with the contract, the depot was not located on the grounds, consequently we did not get the grounds for depot purposes; we got all the right of way.

Q. You testified that the original survey of the road was made to Lake Pepin?

A. No, sir; I did not.

Q. To a point opposite Wabasha?

A. Yes, sir.

Q. Who made that survey?

A. Joseph Harriman made it from Green Bay to Black river; Major Willman from Wabasha to Black river.

Q. Was not the company (meaning the officers and directors) satisfied with the change of line which finally built the road to Winona?

A. Not all of them; no, sir.

Q. Who were not satisfied?

216 A. Ellis, myself, Whitney, and Robinson.

Q. Were you the majority of the board of directors?

A. No, sir.

Q. Did you ever make any formal protest?

A. No, sir.

Q. Did you ever make any particular representation to the board of directors?

(Objected to as incompetent.)

A. No, sir.

Q. Before the line was changed to Winona, or a point opposite Winona, was not John I. Blair, of New York, over the line between Merrillon and the river?

A. Yes, sir.

Q. Did he not, to your knowledge, come out for the purpose of looking over the country and deciding upon the line?

A. I don't know; you said he did; I don't know that he did.

Q. Is not that your belief?

A. It was at the time; it is not now.

Q. Then he did go over the line between Merrillon and Winona?

A. I suppose he did; I went with him as far as Grand Rapids; he did not tell me what he was after at all; I suppose he went further down; in fact, I know so, from hearsay.

Q. Now, in regard to the gravel land at Manawa. State exactly your experience as a railroad man since 1856. What have you done in the way of constructing railroads?

A. I had charge of constructing the first six miles out of Milwaukee on what was called the Fond du Lac Air Line, now the Northwestern road.

Q. Anything more?

A. Nothing more; only on the Green Bay & Minnesota railroad.

Q. What did you do on that?

A. I went along with the engineers, with their survey, paying off, observing, listening to suggestions and giving suggestions.

Q. When did you attend this construction of the six miles out of Milwaukee—what year?

A. '57, I think.

Q. Then, in your opinion, attending the construction of six miles in 1857 and in going over the Green Bay & Minnesota railroad with the engineers qualifies you to testify as a railroad expert?

A. No, sir; I don't testify in that way; I only testify I am a judge of what is needed for embankments and trellis and construction of the road-bed.

Q. Did you suggest the purchase of this gravel bank at Manawa?

A. No, sir.

Q. Was it purchased because in your judgment it was necessary to the construction or operation of the road?

A. It was purchased because the general manager of the road considered it necessary; I went out and looked at it and considered it necessary myself. We had no gravel to ballast the road unless we hauled it a long distance.

Q. Is it not a fact that all you had to do with that gravel bank was to buy the title to it?

A. I did not say I had anything else to do with it. You asked me if I thought it was necessary to have it; I said I did.

Q. And your testimony as an expert in regard to the needs
217 of the road for that particular gravel bank only means that you were told to go and secure title to it and did so?

A. I thought it was necessary to have it.

Q. Is that the reason it was purchased?

A. No, sir.

Q. You said that the gravel bank purchased at Manawa had previously been contracted to D. M. Kelly.

A. I did not say so; I said part of the same bed.

Q. Did you ever try to purchase of D. M. Kelly the part of the gravel bed that had been deeded to him?

A. No, sir.

Q. Had any one connected with the railroad company attempted to purchase that gravel bank of him?

A. Not to my knowledge.

Q. Did Mrs. Davy state to you that the railroad company had purchased that gravel bank, or part of it, previously?

A. Yes, sir; on the opposite side from where I bought; not that part I bought, but on the opposite side; she deeded and sold on the south side; I bought on the north side, between the track and her house.

Q. Did she state what was paid her for the gravel bank deeded to Mr. Kelly?

A. Eighty dollars ($80); gravel bank and right of way.

Q. Whom did she state that money was paid to her by?

A. Mr. Ketchum.

Q. To your knowledge did the railroad company furnish that $80?

A. Yes, sir; the books show the company furnished the $80.

Q. For the particular tract of land in question?

A. Yes, sir.

Q. How many acres were there in the piece deeded by Mrs. Davy?

A. I don't recollect; she said she sold no other; that was the piece. I went up to get her right of way; I found there was no deed for the right of way; she said she had made it to the company.

Q. Have you seen an entry on the railroad books for this identical piece of land, or any consideration paid for it?

A. I have seen the voucher; it says: Pay to Mrs. Davy for right of way; paid Mrs. Davy for deed of land; something of that kind.

Q. I understand you to say that the books of the company show——

A. That $80 was paid before.

Q. Have you seen such a statement?

A. Yes, sir; I saw it on the auditor's books; that is the way I found the voucher.

Q. What other books have you seen any reference to this matter upon?

A. None other.

Q. Do you testify that the piece alluded to in the auditor's book, referred to by you, is the piece that Mrs. Davy deeded or contracted to D. M. Kelly?

A. I could not swear to that; only Mrs. Davy said it was the same piece; she sold no other land.

Q. Then all you know about it is what Mrs. Davy told you about the pieces of land being identical?

A. No, sir; that is not all I know; I know that the auditor's book shows that there was $80 paid for a piece of land bought of Mrs. Davy, and the voucher shows the same thing.

Q. Do you testify that the pieces of land are identical?

A. No, sir.

Q. Do you know whether they are or not?

A. I think I do; I won't state positively. After I got the deed I went up there and ran out the pieces of land; I don't know
218 where the corners were—whether 100 or 200 feet apart, but I located it, in my judgment, as the same piece of land; I would not swear positively.

Q. Did Mrs. Davy show you the corners?

A. She went down with me, but she did not know within a few feet of where they were.

Q. She told you she had previously deeded the piece of land to the railroad company?

A. Yes, sir.

Q. Did she also tell you she had deeded a piece of land to D. M. Kelly?

A. No, sir.

Q. Then, as a matter of fact, may there not have been three pieces of land deeded by Mrs. Davy—one to the company, one to Kelly, one to the company, negotiated by you?

A. There may have been, but she said she did not deed but one piece and make but one deed; I know I cannot find any deeds of any other land on record—that she ever deeded any other land but that particular piece on the records at Winnebago.

Q. If she made a deed of any land to Kelly would it be likely you would have that deed in your possession?

A. No, sir; but if on record I would find it at Winnebago.

Q. Supposing it was not on record?

A. I would know nothing about it.

Q. When did Mr. Kelly become connected with the Green Bay & Lake Pepin railroad, now the Green Bay & Minnesota?

A. In 1870.

Q. During what month of 1870?

A. I think he was elected as a director the 4th of April, 1870.

Q. Do you know as a matter of fact that Mr. Kelly was not a director until the fall of 1870?

A. No, sir; I do not know any such thing.

Q. How comes it that you have these contracts that you have testified in regard to in your possession?

A. Some of them we supposed the right of way were taken for were in my private papers; some, when I was getting the right of way, were handed to me.

Q. Did you get the deeds called for by those contracts which you have presented here?

A. No, sir; I did not; I got some of the deeds—Munger's and Jordan's.

Q. These contracts were all obtained by you in 1870, were they not?

A. Yes, sir.

Q. When was the railroad constructed through Seymour?

A. In 1871.

Q. Did not you, or did not others connected with the railroad company, go through the town or village of Seymour in 1871 and obtain contracts from these same parties?

A. We went through; yes, sir; Ketchum, Randall, and myself went through to locate depots; some contracts were retaken then for depot grounds.

Q. Were not these very contracts retaken, or contracts taken in the place of these contracts which have been presented in evidence?

A. Not that I know of; there was a new one taken of Robbins; I had one of his for five acres; Mr. Ketchum said it was not enough; we ought to have seven; we staid and labored with him——

Q. Do you testify that contracts were not taken from these same parties in 1871, running to D. M. Kelly?

A. I don't know of any such contracts.

219 Q. Do you testify that such contracts were not taken?

A. I don't know of any. I did not take any that I know of.

Q. How many contracts were there in all taken in Seymour in 1870?

A. I think about seven.

Q. Who were present when these seven contracts were taken in 1870?

A. I guess I was alone most of the time. When Robbins' was taken I think Briggs (?) was present. Sally Munger's, S. W. Munger was present and witnessed it.

Q. Was there any one connected with the company at that time present when you took either or all of these contracts in 1870?

A. I don't know whether there was or not. I could tell if I had my diary.

Q. In 1871 did you not assist in taking some contracts through Seymour?

A. Yes, sir.

Q. In whose name were they taken?

A. In the company's, so far as I know—Green Bay & Lake Pepin Railroad Company. I don't know of any taken in any other person's name.

Q. Is it not a fact that contracts were taken in 1871 just before the road was constructed through Seymour over this same piece, covering exactly the same lands?

A. I don't know it to be the case, sir.

Q. Will you testify such was not the case?

A. Not that I know of.

Q. Did you not go through the town and village of Seymour, on the line of the road in 1871, in company with Mr. Ketchum, taking contracts?

A. We went to locate the depots on October the 25th, 1871. Ketchum and myself left to locate depots at Seymour and West; did not decide in regard to the depots at that time. I had contracts for five acres from Mungers and five from Robbins for depot ground. Mr. Ketchum said it was not enough; we must make Robbins give eight and Miss Munger more. We got Robbins to do it. Miss Munger would not consent to give more than the five acres she had promised me.

Q. Won't you please answer my question directly? Did not you, in 1871, before the road was constructed through Seymour, go through Seymour, in company with Ketchum and Randall, then chief engineer, obtaining contracts?

A. No, sir; only in those two places; only at Seymour, where we went to settle the depot grounds. I didn't take any.

Q. Then, if I understand you correctly, you testify that you did not secure any contracts in and through Seymour during 1871?

A. Except the Robbins—he changed his contract for eight acres—that I now recollect of. We were not taking contracts; at least, did not go out for that purpose. I had got done with the right of way. I had taken the deeds before.

Q. In whose name was the Robbins contract taken in 1871?

A. Green Bay & Lake Pepin Railroad Company, I am quite positive.

Q. Under whose superintendence or direction was a survey made from the Black river to a point opposite Wabasha?

A. Under the direction of the board of directors of the Green Bay & Lake Pepin Railroad Company.

Q. Was Mr. Kelly connected with the railroad company at the time the survey was made from Black river to a point opposite Wabasha?

220 A. No, sir.

Q. What time was that survey made?

A. I think in 1868 or 1869; I would not be positive which year; I think 1868 or 1869.

Q. Who made the survey from the Black river to the point on the Mississippi now touched by the Green Bay road?

A. Randall and Alton.

Q. Who were they?

A. They were engineers.

Q. In whose employ?

A. I suppose in the employ of the railroad company.

Q. Do you not know that they were legally elected engineers of the railroad company by the board of directors?

A. I think that Randall was. I don't know about Alton. I don't know whether he was appointed by you or elected.

Q. *Yes* testify, then, that Randall was elected chief engineer of the railroad company by the board of directors?

A. I was not positive. Rice was elected in the first place. He resigned. I think Randall was elected in his place; I won't be positive; either elected or appointed.

Q. Did not Randall and also Alton call themselves and sign themselves as chief engineers of the railroad company?

A. I don't know. They signed themselves, I think, chief engineers. I don't recollect whether they put the company to it.

Q. Did they have an office in the railroad company's office?

A. Yes, sir.

Q. I think you testified, or, if you have not, is not it a fact, you were auditor of the railroad company at one time?

A. Yes, sir.

Q. As auditor, did you not have occasion to audit vouchers signed by G. A. Randall and Alton?

A. Yes, sir.

Q. Did not they sign them as chief engineers?

A. I think they did; I am not positive.

Q. As auditor, did not you know they were paid on the vouchers of the railroad company and that such vouchers were receipted by them?

A. Yes, sir.

Q. And the vouchers, which — paid Randall and Alton as chief engineers, respectively, were audited by you, were they not?

A. Yes, sir.

Q. Then the present line of the railroad from Black river was surveyed either by Randall or Alton, or both—the present line from Black river to the Mississippi?

A. Yes, sir.

Q. Did you ever hear of any protest being made by the board of trustees against the survey of that line?

A. Not as a board; no, sir.

Q. And I think you said you never knew any protest being made against the adoption of and construction on that line?

A. I don't know of any.

Q. I think you have testified that D. M. Kelly was not promised by the railroad company lots of land, like the land at Seymour, for instance?

A. Not to my knowledge.

Q. Do you know whether or not D. M. Kelly had a contract with the railroad company at the time the line was constructed through Seymour?

A. Yes, sir. I said I did not know of any contract or any talk that he ever had outside of the contract he had for the construction of the road.

Q. Then, whatever the contract provides for, you admit D. M. Kelly was entitled to receive, whether it covered these lots of land or not?

221 A. No; I don't admit he was entitled to receive only what was embraced in the contract.

Q. That was my question—whether or not he was entitled to what was embraced in the contract. Did you ever take any contract for any lands in the name of D. M. Kelly?

A. I don't recollect of ever taking any.

Q. Is not it a fact that you did take deeds of land in the name of D. M. Kelly?

A. I don't recollect of ever doing anything of that kind.

Q. Did you know at any time that deeds were being so taken, in the name of D. M. Kelly?

A. I don't recollect of knowing of any being taken in that way.

Q. When was your attention first called to the subject, and when did you first obtain any such knowledge?

A. In 1878—or spring of 1879, rather. I supposed that all the lands taken were taken in the name of the company; and when the land was being platted at Seymour—we were off the track there one day—it was said that Mr. Kelly was laying out those lots. I said I guessed not; the company owns them. I took dinner at Munger's. I asked who she deeded the land to; she said to the railroad company. I paid no more attention to it. That was in 1873, I think.

Q. What was your position with the railroad company at that time?

A. In 1873?

Q. Yes, sir.

A. I was paymaster of the road.

Q. Also a director?

A. Yes, sir.

Q. Also auditor?

A. No, sir.

Q. Then you testify that in 1873, when you were paymaster of the road and a director in the same, you first learned that D. M. Kelly was platting lots which had been deeded to the railroad company?

A. I think it was about that time. I was there. I paid no attention to it. I thought that was laid out for the company, because the company's engineer was at work there.

Q. You were told D. M. Kelly was platting land himself?

A. Yes, sir.

Q. Did you ever inquire as a director or as an individual of D. M. Kelly if such was the fact?

A. No, sir; I did not think it was the fact. I thought if Mr. Kelly wanted to tell me he was platting it there he would do it; it was none of my business.

Q. You believe as a director if D. M. Kelly was taking possession of the company's property you had no right to say anything about it?

A. No, sir; I don't say that. I did not think there was anything in it. I knew I had taken contracts for the same land in the name of the company. I did not propose to question Mr. Kelly's action in the matter at all. The authority I got it from was merely a little gossip. I happened to be taking dinner there and they spoke of it. I paid no more attention to it until I came to hunt up the deeds for depot grounds.

Q. Did you ever read the contract between the railroad and D. M.

Kelly, under which the railroad and D. M. Kelly were operating at that time, when he platted through Seymour?

A. Yes, sir.

Q. Did you assent to that contract as a director?

A. I did.

Q. Did Mr. Kelly have any other contracts with the rail-
222 road company except the one under which the road was built when it passed through Seymour?

A. I don't recollect; he had three contracts.

Q. Did you as a director ever object to either of the three contracts?

A. No, sir.

Q. Did you not as director approve of them?

A. I did.

Q. Did it ever occur to you, previous to the resignation of D. M. Kelly as general manager and director, that he had done anything that his contract did not permit him to do?

A. No, sir.

Q. Mr. Ketchum has testified in his direct examination that you were present with him at Seymour, in 1871, when he took contracts in my name. Was that the fact?

A. He was present when I took one from Robbins.

Q. Who drew that contract with Robbins?

A. I did.

Q. How many more were drawn at the same time?

A. I don't know of any other one but Sally Munger's; we drew to get her to give eight acres. I don't recollect any others.

Q. Did Mr. Ketchum draw any contracts at the time you were there, in 1871?

A. I don't recollect of his doing it.

Q. What is your present connection with the company?

A. I am a director in the company.

Q. What are your duties at — present time as director?

A. I have no duties to perform, particularly. I have not attended any meetings of the board, because it has been in the hands of a receiver; there has been nothing done.

Q. You go off and buy a gravel bank occasionally, do you not?

A. I have been employed by the company to procure some unsettled right of way.

Q. Employed by the company or the receiver?

A. Receiver.

Q. How many days have you worked for the receiver during his administration?

A. I could not tell you.

Q. Half of the time?

A. About that, I should think.

Q. What were you doing?

A. Buying right of way.

Q. What else?

A. Occasionally getting a gravel bed here and there; where he wanted I should see if I could buy it.

Q. You have been employed in that way during the past year?
A. Yes, sir.
Q. Are you in the employ of the receiver in that way at the present time?
A. Yes, sir.
Q. When did you buy this gravel bed at Manawa?
A. This summer. I can give the date.
Q. Give us the date, then, please—give us the month.
A. June, 1880.
Q. Was that before this suit was commenced against D. M. Kelly and others by the receiver, or after?
A. I don't know when this suit was commenced.
Q. Don't you know, as a matter of fact, this suit was commenced over a year ago?
A. No, sir; I didn't know anything about the suit until I was summoned here before.
Q. How long had the railroad been operated through Manawa when you bought that gravel bank?
A. Eight years, certainly.
223 Q. Was that gravel bank the only one on the Green Bay & Minnesota road that was not owned by the company?
A. O, no; it was the most convenient one for them to work at New London; there was nothing between there, I guess, until you got to Manawa that could be used; the one at New London was all used up; that could be bought for any reasonable sum.
Q. The company had been using gravel previous to this purchase by you?
A. Yes, sir.
Q. Where had it taken that gravel from?
A. Out of this same bank.
Q. The same one you bought?
A. Not out of the same identical dirt; in the same bank; in that vicinity; right there.
Q. Were both of those gravel beds bought this summer?
A. Yes, sir.
Q. You spoke about this gravel bed being necessary to the company's use. In what sense do you mean—necessary as a gravel bed?
A. Yes, sir.
Q. And for depot purposes?
A. No, sir; as a gravel bed to ballast road that was sinking in the mud.
Q. Then the road wanting that was sinking in the mud?
A. Yes, sir; the sway across the marshes.
Q. How long had it been sinking?
A. Some time; all across Chiocton swamp had to be drawn this way; the road was suffering very much for want of ballast.
Q. At the time you purchased the gravel bed?
A. Yes, sir.

Redirect examination:

Q. You have been asked in your cross-examination in reference to your duties as director and presence at directors' meetings, and also whether a contract made with D. M. Kelly on the 12th of February, 1872, was approved.

Mr. KELLY: I have said nothing about it.

Q. The subject of contracts was brought up and whether or not they were approved. I will ask you whether or not the contract of the 12th of February was also approved?

A. Yes, sir.

Q. Was there a resolution to that effect passed by the board?

A. Yes, sir.

Q. Will you please look at this paper I now show you and tell me whether that is the resolution?

(Objected to as incompetent. The record is the best evidence.)

A. I think that is it.

Q. In whose handwriting is that?

A. Mr. Kelly's.

(Plaintiff offers the resolution in evidence. It is marked "Exhibit No. 3 in Rebuttal.")

(Objected to as immaterial, incompetent, and not rebutting.)

PLAINTIFF'S "EXHIBIT NO. 3" IN REBUTTAL.

"Resolved, That the contract made on the 12th of last February by this company with David M. Kelly be, and the same is hereby, ratified and confirmed by the present board of directors."

"Resolved, That the secretary be requested to procure the signatures of all the directors to the foregoing resolution before recording it."

(Defendants' counsel, Judge Ellis, further objects that it has not been shown that the signatures were obtained to the resolution as required.)

224 PLAINTIFF'S COUNSEL: The books were produced on a former hearing and the resolution was put in.

Q. Were you ever secretary of the Green Bay & Minnesota Railroad Company?

A. Yes, sir.

Q. Did you ever as such secretary examine the books of the company?

A. Yes, sir.

Q. It was stated in the testimony for the defendants in this case that D. M. Kelly had $50,000 of the stock of the company which he testified he paid for in money. I will ask you whether the books of the company which were produced here in evidence, and which were in your custody as such secretary and examined by you, have upon them any evidence of any such payment being made for such stock by Kelly?

(Objected to as incompetent, the books being the best evidence, and because the testimony is assumed to be given, which is not in fact given.)

(Reads testimony.)

Q. I ask you whether the books in your custody as such secretary and so examined by you have upon them any evidence of any such payment?

(Same objection as to the last preceding testimony.)

A. They have not.

Q. As a matter of fact, did Mr. Kelly ever pay any money for any stock of the company, to your knowledge?

(Objected to as incompetent.)

A. No, sir.

Recross-examination by Mr. KELLY:

(Plaintiff objects to the defendant Kelly examining the witness.)

Q. I understand you to testify that the document presented by you a moment ago was the resolution passed by the board of directors approving my contract of February, 1872?

A. I testified that was your handwriting, and it was the same as the resolution passed.

Q. Do you testify that that was the resolution? I mean the identical piece of paper presented to the board of directors at the time they approved my contract of 1872.

A. I think it is.

Q. Do you swear positively that it is the identical piece of paper that was presented to the board of directors at the time my contract was approved?

A. Yes, sir.

Q. Who presented that paper with the resolution written upon it?

A. I did.

Q. As a director of the company?

A. Yes, sir.

Q. Then, as a director of the company, you presented that identical piece of paper with the resolution written upon it, which was adopted?

A. I think it was the same words. There might be some words changed. That was the resolution that was put. I see Mr. Ellis has marked it as number 1.

Q. Why did you present that to the board of directors?

A. You asked me to present it; you handed it to me to present.

Q. Was that the only reason you presented it to the board of directors?

225 A. That is the only reason I presented it that I know of; only I had agreed to support the resolution—support that contract.

Q. Then you not only presented the resolution to the board, but voted for it?

A. Yes, sir.
Q. Did you make any objection at the meeting to that resolution?
A. No, sir.
Q. Did anybody make any objection at the meeting?
A. Not that I know of.
Q. That resolution was passed by a unanimous vote of the board of directors?
A. I think it was by all present.
Q. Have you ever been treasurer of the company?
A. No, sir.
Q. If D. M. Kelly had subscribed for stock and had paid the money for his subscription in the treasury would it have passed through your hands?
A. No, sir.
Q. Would it have appeared in any books in your custody?
A. In the secretary's books.
Q. As subscription to the capital stock, would the payment have appeared on the secretary's books?
A. No, sir.

Deposition of Timothy Case.

TIMOTHY CASE, called by the plaintiff, being sworn, testified:

Q. Are you of lawful age?
A. Yes, sir.
Q. What is your occupation?
A. Receiver Green Bay & Minnesota railroad.
Q. How long have you been such receiver?
A. Since January 23rd, 1878.
Q. How long had you been connected with the railroad before that time?
A. About twenty-eight years.
Q. Are you competent, from your experience as a railroad man, to form a judgment as to the amount of land which is necessary for railroad purposes at any given point upon the line of a railroad?
A. I think I am.
Q. I will ask you whether there is a town on the line of the Green Bay & Minnesota railroad by the name of Merrillon?
A. Yes, sir.
Q. I will ask you whether at that town the railroad company—the Green Bay & Minnesota Railroad Company—has at present sufficient land for its purposes as a railroad?

(Objected to as incompetent and not rebutting.)

A. No, sir; it has not.
Q. Why not?

(Same objection.)

A. It is a very prominent junction between our road and the West Wisconsin, and the room is inadequate now.
Q. How much more is needed?
A. Twenty acres.

Q. For what purpose?
A. Railroad purposes.
Q. State, if you please, what such land is necessary for—what use.
A. Side track, warehouses, elevators.
Q. Do you want a "Y" at Merrillon?
A. Yes, sir; we need a "Y" very much.
Q. How much land does that take?
226 A. At that point it will take five or six acres.
Q. Have you been contemplating, on behalf of such railroad company, the putting in of a "Y" at that point?
A. Yes, sir.
Q. Why have you not put it in?
A. We have not room—land.
Q. I will ask you whether the fact that the land in the neighborhood of the railroad at this junction, standing in the name of other parties, namely, Mr. Kelly, has or has not interfered with the putting in of a "Y."
A. It has.
Q. Is there a station upon the line of the Green Bay road by the name of Arcadia?
A. Yes, sir.
Q. Has the Green Bay & Minnesota Railroad Company at present in that town a sufficiency of land for its accommodation?

(Same objection.)

A. No, sir.
Q. Please state how much more is needed at that point that is now owned—the title to which is now owned—by the railroad company.

(Objected to as incompetent.)

A. Five to seven acres.
Q. You will please state the situation at Arcadia of the railroad depot with reference to other buildings—whether there are any near it—and especially with reference to the hotel at Arcadia.
A. The hotel is in the way of our business.
Q. How near is it to the depot?
A. About 35 feet.
Q. How near to the outer edge of the platform of the depot?
A. Well, probably about 25 feet; side track, 18 to 20 feet.
Q. From the edge of the side track to the hotel is how much?
A. 18 or 20 feet.
Q. Is that sufficient for the accommodation of the railroad business?
A. It is not.
Q. Does the railroad company at this point, Arcadia, need for the proper transaction of its business all the land upon which that hotel now stands?
A. It does.
Q. Does it need any other land besides that?
A. It does.

Q. Does it need the land upon which the warehouses stand, which have been described in the testimony for the defendants here, at that point?

A. Yes, sir.

Q. I will ask you with reference to the gravel pit at Manawa, which, it was testified by Mr. Abrams, was purchased by the company. Was that necessary for the purposes of the railroad company?

A. It was.

Q. Please state fully why?

A. Well, the railroad was imperfectly constructed in the first place, and a very large portion of it was not ballasted in a proper manner and required more gravel than we had possession of.

Q. Why did you need that gravel.

A. For ballasting the track and grading.

Q. State why you needed to ballast the track.

A. Public safety.

Q. Was the road in an unsafe condition unless ballasted?

A. It was.

Q. Was it built and left in an unsafe condition in that neighborhood across the marshes?

A. It was.

Q. Why?

227 A. Well, the track was laid on subgrade.

(Objected to as incompetent and immaterial.)

Q. What do you mean by that?

A. Without sufficient grade and no ballast.

Q. What do you mean by its not being sufficiently graded?

(Objected to as incompetent and immaterial.)

A. The track was too low for the water to drain.

Q. You mean the track should be raised for the water to drain off?

A. Yes, sir; the track should be raised to drain the water off.

Q. Was it necessary in the raising of that track that gravel should be used as a substratum on which to lay the track?

A. Yes, sir.

Q. Is that gravel bed at Manawa the most convenient and accessible gravel bed which could be used for that purpose?

A. Yes, sir.

Q. It was testified here, by Mr. Kelly, one of the witnesses for the defense, that he wrote to you a certain letter, the date of which he specified in his examination, with reference to the lands and right of way that were in his name along the line of the road, and that you never answered that letter; will you please state the reason why you did not?

A. It was written in the way of a threat, the reason I did not take any notice of it.

Q. Did you, at the time you received that letter, know that the lands, which were apparently in the name of D. M. Kelly, had been in reality given to the company?

A. Yes, sir.

(Objected to as incompetent and not rebutting.)

Q. When did you find that out?

A. Very soon after I took charge of the road.

Q. And did you thereafter, knowing those to be the facts, regard the exaction of conditions by Mr. Kelly, before handing over to the company its own property, as in the nature of a treat?

(Objected to as incompetent, leading, and immaterial.)

A. Yes, sir; I did.

Q. Had you any other reasons for not answering the letter?

A. I had no other reason; I considered it a bulldozing letter.

Q. Was the receipt of that letter a reason or cause for your not making further demand upon Mr. Kelly for the surrender of that right of way?

A. It was.

Cross-examined by Mr. KELLY:

(The plaintiff objects to Mr. Kelly's conducting the cross-examination of the witness same as before.)

Q. How long have you been in the railroad business?

A. Thirty-one years, I think, last August.

Q. State on what railroads in the country you have been employed, and in what capacity.

A. I have been employed on the Hudson River railroad as road-master, superintendent of construction.

Q. Of the whole road?

A. No, sir.

Q. Of what portion?

A. Between Albany and Poughkeepsie, on the construction work between Albany and Hudson—I would say on the construction work between Hyde Park and Poughkeepsie.

Q. Where else have you been employed?

A. New Jersey.

228 Q. State on what railroad in New Jersey and in what capacity.

A. Sussex railroad, New Jersey; general superintendent.

Q. How long was the Sussex railroad in New Jersey?

A. When I commenced it was nearly twelve miles.

Q. How long was it when you left it?

A. Thirty-four—the main line and branches.

Q. State if you have been employed on any other railroad except the two named; and, if so, in what capacity.

A. None other but the Green Bay.

Q. In what capacity are you employed on the Green Bay & Minnesota railroad?

A. As receiver.

Q. Anything else?

A. I act in the capacity of general manager and superintendent.

Q. How long is the Green Bay & Minnesota railroad?

A. Two hundred and fourteen miles.

Q. Then I understand that you were employed on the Hudson River railroad, on a section of it, in the construction and in the care of (the) road-bed, and also on the Sussex railroad as superintendent, a railroad 34 miles in length including branches, and that with those two exceptions you have had no railroad experience until you took charge of the Green Bay & Minnesota railroad as general superintendent, manager, and, afterwards, receiver; that is a facts, is it?

A. That is a fact.

Q. You stated that the Green Bay & Minnesota railroad at Manawa, or near this gravel bank, was imperfectly constructed?

A. Yes, sir; east of the gravel bank.

Q. You mean by that, do you not, it was not perfectly constructed; it was not in entirely good order?

A. Yes, sir.

Q. Did you ever know of a railroad in the United States to be perfectly constructed as soon as the trains began to be operated upon it?

A. Not entirely; I think not.

Q. Is it not a fact that in this country a railroad construction account runs along with the operating account for several years, usually?

(Objected to on the ground of irrelevancy.)

A. Yes, sir; I think that is so.

Q. It has been testified in this case by Mr. Abrams that the track east of Manawa was badly sunken; that was a fact, was it?

A. Certain portions.

Q. Did that sink in after you became manager, superintendent, and receiver of the road?

A. I can't say that it sunk; it lost some grade; the grade was washed away at the time of the freshet.

Q. Then a portion of the track for which this ballasting was used was washed away, and after you became connected with the road?

A. A certain portion, and some of it had sunk.

Q. And you used this gravel to fill up the sunken portions and these washed-away places?

A. Ballast the road where it happened.

Q. Did you ever know of a track being laid after a road was ballasted, if no track had been laid previously?

A. Yes, sir.

Q. You have known the track to be ballasted before any rails were laid upon it?

A. Yes, sir.

229 Q. It is the custom, is it, to ballast up a track before the rails are laid upon it?

A. Twenty years ago it was the custom.

Q. Was it the custom in this country?

A. I can't say.

Q. Is it not a fact that the railroads in this country—the track of railroads in this country—are usually ballasted after the rails are laid down?

A. I can't testify definitely in regard to that, my experience not being in the western country in railroad matters.

Q. Is that Green Bay & Minnesota railroad in perfect condition to-day?

A. No, sir; it is not.

Q. Have you bought up all the gravel banks along the line of that road, wherever situated?

(Objected to on the ground of irrelevancy.)

A. We bought what we thought was necessary at the present time.

Q. Have you bought what you thought was necessary for all time to come?

A. I can't say; I think not, for all time.

Q. And there are gravel banks along the line of that road you have not purchased?

A. Yes, sir.

Q. How long after the road was completed did you become connected with it in any capacity?

A. I think it was nearly two years. I think it was constructed—the last part of it—in 1876.

Q. How long after the road was constructed through Manawa did you become connected with the company?

(Objected to because the witness has already shown he came to this country in 1877; took charge of the road in 1878. It appears that the road was built at a specified time, already a matter of record.)

A. I believe the record would show it was three or four years.

Q. Will not the record show that the road was constructed through Manawa in 1872?

A. I am not positive about that; I can't say definitely.

Q. Will you testify it was not constructed in 1872?

A. No, sir; I will not.

Q. You became connected with the road in December, 1877, did you not?

A. Yes, sir.

Q. Do you know how many people there were at Merrillon or how much business was done at Merrillon when the road was constructed through Merrillon?

A. No, sir.

Q. Do you testify that at the time the road was built there was not land enough there for all business purposes, so far as the railroad was concerned?

A. I cannot testify in regard to that matter.

Q. Then you don't know what was necessary in the way of land for railroad purposes at the time the road was constructed through Merillon?

A. No, sir; not at that time.

Q. At the time you became connected with the railroad company was not there a Y at Merrillon?

A. Yes, sir—no, there was a half of a Y.

Q. And you now testify that another Y is necessary for the proper conduct of the business at Merrillon?

A. Completion of the Y. It wants two more than there is now. What we call a Y is a side track reaching from one railroad company's track to the other.

Q. Is there not now much more business at Merrillon in
230 the way of exchange of freights between the railroads and freights shipped and freights received than in 1873, when the road was constructed through that point?

A. I cannot answer the question.

Q. Is there more business there to-day, or at present, than when you first became connected with the railroad?

A. Yes, sir.

Q. You have testified that one or more Y's are now needed at Merrillon. Where is it necessary those Y's should be put in? Describe the situation.

A. We want it on both sides of our track there.

Q. East or west of the West Wisconsin track?

A. East, on both sides.

Q. Why don't you put them in?

A. On account of the land not being in our possession.

Q. Did you ever try to purchase land at that point for these Y's?

A. I have, at different points on one side of the road.

Q. Did you ever try to purchase of Henry Ketchum, of Hiles, or Kelly any land for any purposes?

A. No, sir.

Q. Did you ever attempt to condemn any land there by due process of law for Y's?

A. No, sir.

Q. Then you have been able, notwithstanding your necessity, to conduct your business at Merrillon without the Y's you desire?

A. We have got along somehow, at a slow rate.

Q. Why did you not condemn the land at Merrillon for the purposes of the Y's?

A. Because we thought we had property enough when we came of our own, if we had the titles to it.

Q. Why did you not use it if you had property of your own?

A. Because it was in litigation.

Q. Could you not have condemned that property in such a way as to protect yourself in case it was owned by you or your company?

Mr. Case: I object to this as all nonsense.

A. I have doubts about it—whether we could have protected ourselves or not.

Mr. Larned: I make the objection that it is a conclusion of law he is asking the witness.

Q. You have had experience in condemning rights of way, have you not?

A. Quite a large experience.

Q. During your thirty-one years of railroad experience do you

not know, as a matter of fact, that right of way can be condemned, or land for that purpose, in such a way that you will be protected from all questions of title?

(Objected to as a question of law.)

A. I have my doubts in regard to whether I could have had that land condemned there.

Q. You have testified that soon after you became connected with the railroad company you were aware that that land, held in the name of D. M. Kelly, really belonged to the company. State how you became so informed; by the witnesses who have given testimony in this case?

A. No, sir; Mr. Merrill, your own right-of-way agent, told me of it.

Q. Who else told you of it?

A. I can't say; I got the facts from you as much as any one.

Q. Did you ever ask D. M. Kelly that question—if he had any lands that belonged to the company?

231 A. I can't say that I ever did, but I don't recollect.

Q. Did you ever ask George Hiles or Henry Ketchum the same question—if they had lands in their possession belonging to the railroad company?

A. I don't think I have.

Q. You have testified that you did not reply to the letter which is in evidence, because you construed it to be a threat?

A. Yes, sir.

Q. Inasmuch as D. M. Kelly demanded you should do certain things?

A. Yes, sir.

Q. Did you not at one time ask D. M. Kelly what he would take for the rights of way and depot grounds standing in his name?

A. I have no recollection of it at the present time.

Q. How came D. M. Kelly to write you the letter which you call a threatening one?

(Objected to as incompetent.)

A. D. M. Kelly must answer that; I cannot.

Q. Did you not ask D. M. Kelly to write you such a letter?

A. I don't recollect any such thing.

Q. Did you not go into D. M. Kelly's office and ask him what he would take for the rights of way and depot grounds standing in his name, or for what consideration he would give the title of the same to the company?

A. I have no recollection of it or recollection of putting such a question to Mr. Kelly.

Q. D. M. Kelly has sworn in this case that you came into his office and, among other questions, asked him to give you a list of all suits in which he was interested as bondsman for the company. Was that a fact?

A. I think there was something spoken about some suits. I can't say whether it was in D. M. Kelly's office or in mine.

Q. Did you ever come into D. M. Kelly's office and talk with him

in regard to rights of way and depot grounds on the line of the road and about suits in which he was bondsman?

A. I recollect about going in and talking with D. M. Kelly about rights of way.

Q. State the conversation regarding rights of way, so near as you can recollect it.

A. I inquired of D. M. Kelly how much it would cost to obtain the right of way.

Q. What right of way?

A. The titles to that right of way the Green Bay & Minnesota railroad was passing over.

Q. Do you mean to all rights of way held by D. M. Kelly?

A. All rights of way not at that time acquired by the company or secured by the company.

Q. What else was said during this interview at D. M. Kelly's office?

A. Mr. Kelly stated about what the right of way could be obtained for, he thought, and by careful proceedings, and I told him I was very glad to hear that it could be obtained at a certain price he named.

Q. Was anything said at that time about depot grounds?

A. That was included in the right of way subject.

Q. Was anything said at that time about suits in which D. M. Kelly was bondsman?

A. It is possible there might be. I have no recollection in relation to the matter in connection with the right of way.

232 Q. Did you not ask D. M. Kelly to make you a list of suits in which he was bondsman?

A. I am not positive about that.

Q. Was not this letter of D. M. Kelly's, which you stated to be a threatening letter, written in response to a request made by you of D. M. Kelly, in his office?

A. No, sir. I never made any request that called forth such a letter.

Q. How long after you became connected with the company was this interview with D. M. Kelly, in his office?

A. I can't tell.

Q. State to the best of your recollection.

A. It might have been eight or ten months.

Q. Then eight or ten months after you became connected with the railroad company you asked D. M. Kelly what he thought the rights of way could be obtained for?

A. It might have been less or over. I think it was about that time.

Q. Who was present besides yourself and D. M. Kelly at this interview?

A. That I can't say—whether any one was present. Bingham might have been present.

Q. Who was he?

A. Our former supply agent.

Q. Who is Bingham?

A. Your secretary, I suppose—confidential clerk.

Q. Were you ever at D. M. Kelly's office at any other time, except on this one occasion?

A. I can't say. I might have been there two or three times. I don't know for what object I was in there, anything more than to call and ask Bingham a question or so relative to minor interests.

Q. Did you not, subsequent to the receipt of this letter which you allege to have been a threatening letter, send down and request Bingham to furnish you a copy, as you had lost the original?

A. I can't say as I did. I don't recollect it.

Q. You can't testify whether you did or did not?

A. I can't, definitely; I may have sent down; more likely I made the request myself, if I made any such request, but I have no recollection that I did.

Q. Did you report the receipt of that letter or its contents to your principals in New York?

(Objected to on the ground of incompetency.)

A. I can't say.

Q. Did you send that letter or a copy of it or a statement of the contents of it to your principals in New York?

A. I have no recollection of it.

Q. How long after that letter was written and received by you did you begin this suit against the defendants?

A. I have not the date; no memorandum of dates.

Q. State to the best of your recollection.

A. I can't tell what time it was. It might have been six months; it might have been less than that.

Q. Before you commenced this suit against the defendants what efforts did you make to acquire a title to and possession of the lands which you claim to be the property of the railroad company? State what efforts you made, if any.

(Objected to on the ground of immateriality.)

233 A. I did not make any efforts, for the reason the threats in the letter was such that I felt that I could not enter into any negotiations with parties that were attempting in the manner they were to hamper my efforts in obtaining the rest of the right of way of the road.

Q. Did D. M. Kelly ever make any threats other than those contained in the letter referred to, to your knowledge?

A. I don't recollect.

Q. Did Ketchum ever make any threats by letter or otherwise?

A. No, sir.

Q. Did Hiles ever make any threats by letter or otherwise?

A. I think not.

Q. Did you ever make any tender or offer to all or either of these defendants of the moneys paid out by them for these lands which you claim are the property of the railroad, or cause such offer or tender?

A. I don't recollect as I did.

Q. Why did you not make any tender or offer?

A. For the reason I did not think I was justified in making any negotiations with them. Their interests were so conflicting with the interests of the Green Bay & Minnesota Railroad Company.

Q. Then you made no tender or offer of the consideration paid by these defendants for those lands because you considered their interests were antagonistic to the railroad company's?

A. Certainly.

Q. I am going to show you this letter which has been introduced in evidence, which was sent to you by D. M. Kelly, and I am going to ask you to point out the portion of the letter which you considered to be threatening and which caused you not to make any reply to it or any negotiations with D. M. Kelly. Here is the letter referred to. Will you read the letter and indicate the portions of it which you conceive were threatening and which induced you to take the course you did take? Will you read it out loud?

(All this testimony is objected to by the plaintiff as being utterly immaterial, whether or not the company made, through its receiver or any other officer, demands for the property which it owns.)

Q. Will you please read the letter in full, commencing with the date?

A. I will reply here; that is a different letter, I think, probably a different letter than the threat was in, and might have been prior to this date. I can't say whether prior to this date or afterward. I think the threat may not have been here.

(The witness' attention is now called to the letter, and he is asked to state, after he has read it, what there is in it that is in the nature of a threat.)

GREEN BAY, *Nov.* 22, 1878.

Timothy Case, Esq., receiver of G. B. & Minn. R. R. Co.

SIR: Referring to a conversation had with you a number of months ago and to a request then made by you of me, I now have to state that the railroad suits in which I and friends of mine are held as sureties are, so far as I am at present advised, as follows:

Sarah McVey	*vs.*	G. B. & Minn. R. R. Co.		
R. C. and Esther J. Lyon	*vs.*	"	"	(2 cases.)
Isaac R. Grover	*vs.*	"	"	
Annie Riggs	*vs.*	"	"	
Joseph Pettis	*vs.*	"	"	

234 Also in unpaid costs in New London Striker suits.

Also there is a suit in New York city courts, Garsia *vs.* myself, in which the railroad company is the real party in interest. In this case the damages are laid at $90,000, but without doubt it could be settled for not to exceed $5,000, and a short time before I left the service of the company I could have settled it for $500, but, not wishing to be blackmailed, I refused to pay a dollar.

The enclosed letter, just received, will show what the able attorney in New York who has been retained in the case thinks of the chances of the plaintiff to recover in the action. Please return the

said letter to me. If, then, the G. B. & Minn. R. R. Co. or its friends will give me an ample bond to hold me harmless from the foregoing described suits, I will make, execute, and deliver to it a deed, free of expense, of all right of way and of all depot grounds now being used by it, which is the property of myself, and the title to which is in me.

Yours, &c.,

(Signed) D. M. KELLY.

Q. Did you ever make any reply to that letter?

A. I don't recollect of making any reply to that.

Mr. LARNED: Is or is not that the letter containing the threat you speak of?

A. That is not the letter.

Q. Did you ever reply to that letter?

A. I presume I did not.

Q. Why not?

A. Because of the actions of my predecessors relative to the property.

Q. What actions of your predecessors?

A. Holding the titles in their own names.

Q. Then you did not ask the defendants to give you a title to these lands which you claimed the company owned because the the title to such lands was in them?

A. Yes, sir; that is the reason—one reason.

Q. For that reason you made no offer or tender of the moneys that paid for the same.

A. One of the reasons.

Q. When did you receive this other letter alluded to by you containing threats?

A. Not having a memorandum of it I cannot state.

Q. State to the best of your recollection.

A. I can't tell.

Q. Was it before or after this letter was received you have just read?

A. I think it was before; it might have been afterwards.

Q. Where is that letter, if you ever received any such one?

A. I think I have the letter on file.

(Defendants give notice to plaintiff to produce the letter referred to and have it attached to and made an exhibit in this case.)

WITNESS: I don't say I have the letter, I think I have.

Q. Are you in the habit of keeping your letters on file?

A. Yes, sir; what I don't destroy.

Q. Do you destroy many of you business letters?

A. Sometimes I do.

Q. What proportion do you destroy?

A. Those I think ought to be treated with contempt.

Q. Why did you not destroy this letter you have just read?

A. I don't know whether I did destroy it or not. I don't know whether I have got it on file or not.

Q. You treated it with contempt, did you not?

A. I presume so.

Q. State to the best of your recollection what was in this
235 other letter which led you to treat it with contempt because it was a threatening letter.

—. Well, the inferences contained in it.

Q. Give the language as nearly as you can give it.

A. The inference was contained in it that I must not say anything in relation to the property in Kelly's name; that it belonged to the company. If I thought him a dishonest man I must not make it manifiest by word or deed.

Q. Give the language as nearly as you can of that letter.

A. That is the sum and substance of it.

Q. Do I understand you to testify you ever received a letter from D. M. Kelly in which he said you must be careful what you said about lands held by D. M. Kelly which belonged to the company? Did the language so state?

A. It was implied; there was an implied threat in the letter, that I must be careful what I said.

Q. Was there anything in that letter which stated you must be careful what you said about lands held by D. M. Kelly which belonged to the company? I am asking the question about the language of the letter, not the inference.

A. I have answered the question.

Q. Will you answer my last question? Do you answer that question "yes?" Is that your answer?

A. The language implied——

Q. I am asking about the language, not the implication.

A. The word "land" probably was not used in the letter.

Q. You have not answered my question.

Mr. LARNED: Do you remember the language of the letter?

A. No, sir.

Q. Do you remember any of the direct language of that letter to which you refer?

A. I know it was a threatening letter; that is all.

Q. Can you state exactly any of the language contained in that letter?

A. I have not a memorandum of it here.

Q. Can you state any of the exact language of that letter?

A. I have no recollection of the exact language used in that letter.

Q. You have testified that this letter to which you now refer may have been written before or after this other letter which you have been reading. That is so, is not it?

A. Yes, sir.

Q. If the letter to which you refer was written after the letter you have just read, why, then, did you not reply to the letter you have just read?

A. I thought there was no other way to negotiate with D. M. Kelly, Hiles, and Ketchum in relation to the right of way or depot grounds only through the court.

Q. You were an officer of the company before you became its receiver?

A. Yes, sir.

Q. How long manager or superintendent before you became receiver?

A. Actively, about twenty-five days, I believe.

Q. When did you first know this road was to be put into the hands of a receiver?

A. I think I knew it on the 22d or 23d. It might have been on the same day I was appointed receiver.

Q. Did you have any knowledge that it was the intention of any of the bondholders or stockholders to apply for a receiver until you were appointed?

A. I did not.

236 Q. Did you advise any of the stockholders or bondholders to put the road into the hands of a receiver?

A. I did not, either by letter or word.

Q. Who first informed you the road was in the hands of a receiver or you had been appointed receiver?

A. I was there when they appointed me receiver; at Milwaukee or Racine.

Q. How did you happen to come to Milwaukee at the time you were appointed receiver?

A. By telegraph.

Q. Who sent the telegraph?

A. I can't say positively; I think Larneds or Blair.

Q. Did you receive any letter upon the subject before you were appointed receiver?

A. No, sir.

Q. And you came to Milwaukee because of a telegram requesting you to do so?

A. I went to Chicago first.

Q. Who did you meet in Chicago when you first went there on this telegram?

A. Blair and Larned—Blair and some other parties.

Q. Who else?

A. I do not recollect.

Q. What day was that?

A. I think the 22d.

Q. January, 1878?

A. Yes, sir.

Q. Did you come to Milwaukee with those parties?

A. Yes, sir.

Q. What did they say to you about the appointment of a receiver when you went to Chicago and met them there?

A. That the road was insolvent. They wanted to know what they had; they wanted to know about the investment.

Q. How came you to be appointed receiver? Who appointed you?

A. The court did.

Q. On whose application?

A. The application, I believe, of the Farmers' Loan Company and bondholders.

Q. Who was the agent who made the request?

A. Blair.

Q. Was he a large stockholder and bondholder?

A. He was a bondholder.

Q. Was he also a stockholder?

(Objected to as totally immaterial to these issues.)

A. I don't know as he stated he was a stockholder.

Mr. LARNED: I ask for a ruling upon that point, whether the witness is to be examined upon matters totally foreign to this issue to any extraordinary length.

The examiner says he has no power to rule upon that question.

(Taken subject to the objection.)

Q. Blair was a large stockholder, was he not?

A. He was or had been. I would not say whether he was a large stockholder then or not, or whether he had given away his stock.

Q. Don't you know he has been and is now a large stockholder in the company?

A. I do not know.

Q. How do you know he is a bondholder?

A. I heard him say he was.

Q. Did you hear him say he owned any stock?

A. I heard him say once he did own some stock.

(Same objection as before, and the stock-book is the best evidence.)

Mr. LARNED: I note an objection to all testimony in reference to the stock that may or may not have been owned by J. I.
237 Blair or the bonds that may or may not have been owned in some railroad company not specified by the examiner (Mr. Kelly); and I shall make such objection the ground of a motion to the court that the defendants in this case pay the costs of all such irrelevant testimony, of which I request an account may be kept.

Q. How long were you receiver before this suit was commenced against the defendants?

A. I can't state.

Q. About how long?

A. I can't tell you about how long it was.

Q. You were appointed receiver in January, 1878, were you not?

A. In 1878; January 23d.

Q. And this suit was brought in the summer of 1879, was it not?

A. I think it was somewhere there.

Q. How came you to bring this suit? With whom did you consult about bringing this suit before you commenced proceedings?

A. With our attorneys.

Q. Did you consult with any of the Eastern stockholders or bondholders about bringing this suit before you instituted proceedings?

A. I might and might not.

Q. Will you testify that you consulted any Eastern stockholders or bondholders before instituting proceedings in this case?

A. I can't say as I did.

Q. Did you consult the Chicago attorneys of the company, the Messrs. Larned?

A. Yes, sir; I think I did.

Q. Were you authorized by any Eastern bondholder or stockholder to begin this suit before you instituted proceedings?

A. I can't say whether I was authorized or not.

Q. Will you testify you were authorized?

A. No; I will not.

Further examination of this witness suspended in order to allow the examination of another witness, Mr. Hancock, who desires to leave.

Deposition of William R. Hancock.

WILLIAM R. HANCOCK, called by plaintiff, being sworn, testified:

Q. What is your name?

A. William R. Hancock.

Q. What is your occupation?

A. I am now cashier and paymaster for the receiver of the Green Bay & Minnesota railroad.

Q. Were you connected with the Green Bay & Minnesota railroad before the receivership?

A. I was treasurer.

Q. How long had you been such treasurer?

A. Since May, 1872.

Q. It was stated by one of the witnesses for the defense, Mr. Kelly, in reference to the lands in controversy in this case, that it was known to the officers of the road that such lands were taken by him in his own name, and that he had such conversation with you and that you knew it. Is that the fact?

A. I have not any recollection of any conversation with Mr. Kelly about the land held in his name.

Q. Do the books of the railroad company which you control as such treasurer show the payment by Mr. Kelly for shares of stock in the company owned by him?

(Objected to as incompetent, the book being the best evidence.)

A. Not during my term of office.

Q. How long have you been such treasurer?

A. 15th of May, 1872.

Q. Who was treasurer before you?

238 A. E. J. Shalon, James H. Elmore; I don't know of any others.

Q. Did you examine the accounts prior to taking possession as treasurer?

A. No, sir.

Q. You don't know what the books, prior to your office, may show?

A. Nothing more than I have been over the accounts in drawing off Mr. Kelly's account.

Q. Does an item appear in Kelly's account?

A. No, sir.

(Objected to, the books being the best evidence.)

Cross-examination by Mr. KELLY:

(Plaintiff's counsel objects to Mr. Kelly cross-examining the witness.)

Q. Do you not recollect that D. M. Kelly had some conversation with you regarding the lots at Seymour standing in his name and that he claimed they belonged to him?

(Objected to as leading.)

A. All the recollection I have in regard to the land was a couple of payments which you handed in there to me as treasurer and told me to credit them up to you as cash on account of the sale of Seymour lands.

Q. And did not I afterwards say to you that that money belonged to me because of those lots and ask you to put that money on the other side on my account?

A. It was credited to you at the time it was paid me; credited directly to you.

Q. Did it not figure on my account on the other side afterwards at my request? I said the Seymour lots belonged to me.

A. I have no recollection of that. I don't remember of anything done with it after that.

Q. How long after, as a matter of fact, did you know that I had started town sites along the line of the road and was selling lots?

A. No, sir; not directly; I heard you had; I never had been informed by anybody that had any authority.

Q. Did I ever, with this exception, account to you for any sales of lots?

A. I have no recollection of anything of that kind.

Q. Would it not have been the proper thing for me to have done if I had sold the company lots to return the money to you as treasurer?

A. Yes, sir.

(Question and answer objected to as asking a conclusion from the witness upon a subject upon which he has not been shown to be an expert.)

Q. Were you not a director of the company?

A. No, sir.

Q. You did not attend directors' meetings?

A. No, sir.

Q. Did you ever read the contracts presented in evidence between myself and the railroad company?

A. No, sir; I never saw them.

TIMOTHY CASE recalled.

Examined by Judge POWERS:

Q. The depot building at Arcadia was built before you took control of the road, was it not?

A. Yes, sir.

239 Q. What is the size of the building?

A. I have not the measurements.

Q. About how much is it?

A. I think it is 25 feet wide; probably 40 or 50 feet long.

Q. On which side of that building does the main track run?

A. West side.

Q. There is a platform, is there not, between the building and the track—this main track where the train comes in?

A. Yes, sir.

Q. What is the width of this platform?

A. From 12 to 16 feet, I think.

Q. Is there any platform upon the other sides of the building? You say this main track where the passenger trains stopped is upon the west side. Now, upon the north and south ends and east side is there any platform?

A. Yes, sir; there is.

Q. The platform runs clear round the building, does it?

A. Yes, sir.

Q. That upon the east side—how wide is that platform?

A. Ten or twelve feet wide, I should think.

Q. And the one upon the west side where the trains come in, you say is how large?

A. Twelve to sixteen feet.

Q. Is it not a fact that the one upon the west side is more than double the width of the one on the east side—I have that wrong. Is not it a fact that the one upon the east side is more than double that of the one upon the front where the main track of the road is?

A. No, I think not. I think it is about one-third narrower than the west side, that on the east side. I may be incorrect about that.

Q. You certainly are.

A. Measurements can be had. I never have measured the platforms. I don't know about the length.

Q. On which side of the depot is this hotel you speak of?

A. On the east side of the depot, or south side.

Q. And between the hotel and the depot there is a side track?

A. Yes, sir.

Q. Is not there also a platform on the side of the hotel next to the depot, and next to that side track?

A. There is an awning, I think—piazza—around the depot platform.

Q. Sort of a sidewalk?

A. I think there is no platform outside of the piazza. It is outside the main building.

Q. How wide is that?

A. I presume it is seven or eight feet wide.

Q. From this platform on the south or east side of the depot, as you call it—on the side next to the hotel, how high is that platform from the ground?

A. The depot platform on the side next to the hotel? I think from two to two and a half to three feet high.

Q. Steps down there, is there not?

A. Yes, sir.

Q. How far do those steps extend beyond the platform?

A. The steps, I think, run down the same way the track runs, on what we call the south or west side.

240 Q. Is there any towards the hotel?

A. I can't say as there is. There might be and might not be.

Q. How far is it between those two platforms—that is, between the hotel platform and the depot platform?

A. I should judge in the neighborhood of 28 to 30 feet.

Q. In that space runs this side track?

A. Yes, sir.

Q. Who built that platform—depot platform—on the side next to the hotel?

A. I don't know who built that; I know on the south side we gave permission to Hiles to extend the platform north and south, or the way the track runs—the main line runs.

Q. Did not Hiles, with your permission, build this platform on the side of the depot next to the hotel?

A. He may have built part of it; I am not positive about it; I think, though, part of it had been built prior.

Q. Was not it a sort of a general operation between you and him, he furnishing the labor, and you—that is, the company—furnishing the lumber or part of it?

A. I gave him that opportunity for the purpose of benefiting his commercial traverse there.

Q. When was this hotel built?

A. I think in 1879—between 1878 and 1879.

Q. It was built before this suit was commenced, was not it?

A. I can't state definitely whether it was or not.

Q. Don't you, as a matter of fact, know whether that hotel was built before this suit was commenced?

A. No, sir.

Q. Were you not there frequently about the time that it was commenced and in process of construction?

A. No, sir; I was there at the time they were building the new one that burned up there; this was a temporary one put up there.

Q. Were you not there at the time he was building this present one?

A. I think not; it went up like a mushroom in the night.

Q. I don't think it went up very soon.

A. I do; I think it went up very soon.

Q. You did not know anything about it until it was built.

A. It was built; I was not there at the time it was built; I was

there after it was finished, when it was nearly built, within two or three days.

Q. Did you know, prior to this commencement, it was to be done?

A. I knew that he was talking about putting on an addition to a brick building he had there.

Q. Where is that brick building?

A. Adjoining the present hotel—part of it.

Q. You knew what he was going to do, didn't you?

A. That is substantially what he was going to do; he said he was going to put up a temporary building there.

Q. Did you make any objection to it?

A. I can't say what objection there was made to it; I made objection to it as being too near the depot.

Q. When?

A. About the time he said it was only a temporary one.

241 They were going to put a new one out where the other one was burned down.

Q. How far is that building from the depot?

A. I think about 35 feet.

Q. Now, is it not a matter of fact that the nearest point that hotel building is to the depot building—and by depot building I don't mean the platform on that side, but the depot itself—that the nearest point is over 80 feet?

A. No, sir; — is not a fact.

Q. Is it not a fact it is over 60?

A. No, sir.

Q. Are you sure of that?

A. I am pretty sure of it.

Q. Did not you, as receiver or manager of the railroad company, carry the lumber that was needed to build that hotel free of freight for the express purpose of building it?

A. I carried for the building that was burned down.

Q. Did not you for this one?

A. I don't know whether it was or not, if it was prior to its being put up.

Q. I have no doubt the lumber was taken there before it was put in the building.

A. And I think it was there, too, and a surplus over.

Q. You think he got carried free more than was needed for the purpose of the building?

A. I think he did.

Q. The railroad company has title to some land there, has it not?

A. Yes, sir; I believe it has.

Q. Can you state where that is?

A. No, sir; I can't state exactly where it is located; that is in my right-of-way man's book.

Questions by Mr. THEODORE CASE:

Q. You stated that you agreed to carry the lumber free of charge for the hotel that burned down, or both hotels?

A. The hotel that burned down.

Q. If any lumber was carried for this second hotel it was carried without your agreement?

A. I don't recollect making any agreement for the second hotel.

Q. Why did you agree to carry the lumber free for the first hotel, which you stated was burned down?

A. To establish a building for the promotion of the Arcadia mineral springs, which is directly connected with our interests.

Q. Did you think by so doing you would draw travel upon the road?

A. Yes, sir.

Q. And also help build up the town?

A. Yes, sir.

Questions by Mr. POWERS:

Q. Didn't you carry the lumber, or cause to be carried, on the railroad you were then controlling, to build this hotel after the other hotel was burned down, and carry it free?

A. No, sir.

Q. Are you sure of that?

A. I am sure of it; and my recollection is that Mr. Hiles stated at the time he had enough on hand to put up another hotel or to put on the addition.

Q. Were not the bills of lumber, after the first hotel was burned down, marked "free" or "dead-head," the usual way?

242 A. I don't recollect of their being so. If it is so they are on record.

Questions by Mr. CASE:

Q. You have no personal knowledge of any of the bills in regard to the shipment of lumber?

A. No, sir.

Q. Your intention was not to carry any lumber for the second hotel free of charge?

A. That was my intention, the first hotel being burned down.

Q. During the progress of your cross-examination there has been a letter placed in your hands, which was read after request by the examiner Mr. Kelly) in this case, in which Mr. Kelly offered to convey to you, as receiver of the Green Bay & Minnesota Railroad Company, certain rights of way and depot grounds, subject to the condition that you first indemnify him and his friends—I think by sufficient bond—against any sum or sums of money which you had paid or might have to pay on bonds on which he was surety, and also secure him for any sum of money that might be required in the case in New York. In that letter did he further offer, upon your doing as he requested in the letter, to convey to you all the village lots at the different points along the line which you claim belong to the company, and to account to you for all the sums of money which had been received by him from the sales of the lots?

(Objected to as incompetent and immaterial.)

A. He did not.

Q. Then the reason you refused to answer his letter was that he did not offer to convey to you what belonged to the company?

(Objected to as leading and incompetent.)

A. That is the reason I refused to negotiate.

Q. Being an unfair offer?

(Same objection.)

A. Yes, sir.

Examined by Mr. KELLY:

Q. You have testified you refrained from answering that letter because threats had been made by letter to you?

A. In part, I say.

Q. Now, you testify that you did not reply to that letter because D. M. Kelly didn't offer to convey to you village lots?

A. That was one reason.

Q. Which of the two answers is the correct one?

A. Both.

Q. Did you not state that the reason why you did not reply to that letter was that D. M. Kelly had threatened you in a letter?

A. That I understood was one of the reasons. I stated that in my former testimony.

Q. Did you inform D. M. Kelly, by letter or word of mouth, that you did not answer his letter for the reason that it did not also contain an offer of village lots?

A. I did not.

Q. Did you inform D. M. Kelly, in person or by letter, that if he would include the village lots in his offer you would accept and give him the desired bond?

A. I don't recollect.

Q. Will you testify you did or did not make any such proposition?

A. I don't think there was a verbal or written proposition.

Mr. LARNED: We will produce the letter which was referred to and for which notice was given and attach it to the witness' deposition.

Adjourned until 9 o'clock to-morrow morning.

243 6TH OF JANUARY, 1881—9 o'clock a. m.

Parties met pursuant to adjournment.

Mr. LARNED: I offer in evidence a deed from Catherine Davy to David M. Kelly, which it was stipulated was to be produced at this hearing. We retain the original.

(Objected to by counsel for Mr. Kelly as not rebutting.)

Mr. LARNED: I put it in as part of our case-in-chief. I offer also a voucher of the Green Bay & Lake Pepin Railway Company to Catherine Davy in connection with the deed.

(Objected to by Mr. Ellis as incompetent, immaterial, and not rebutting.)

Mr. LARNED: Which voucher is approved by H. Ketchum and D. M. Kelly.

The following is a copy of the voucher:

PLAINTIFF'S EXHIBIT No. 24.

Office of Green Bay & Lake Pepin Railway Company.

NEW LONDON, WIS., *May* 31*st*, 1872.

Pay to Mr. Kendrick for Catherine Davy $80 and charge to right-of-way account.

H. KETCHUM.

To treasurer of Green Bay & Lake Pepin Railway Company, Green Bay, Wis.

Green Bay & Lake Pepin Railway Co. to Catherine Davy, debtor.

Ketchum draft on the treasury on account right of way, $80.

Received May 31, 1872, of W. R. Hancock, treasurer of the Green Bay & Lake Pepin Railroad Company, eighty dollars, in full payment of the above bill.

S. B. KENDRICK.

Correct:
FRED. S. ELLIS, *Auditor.*

Approved:
—— ——, *President.*

Isaac A. Briggs Recalled.

ISAAC A. BRIGGS recalled by complainant:

Q. Where do you live?
A. Arcadia, Trempealeau county, Wisconsin.
Q. I think you stated in your direct examination what your occupation was, how long you had lived there, &c.?
A. Yes, sir.
Q. In the testimony which is produced here for the defendants in this case there has been something attempted to be shown about the value of land at Arcadia. Are you familiar with the values of land in that locality?
A. Well, I have owned and dealt some in there for years past.
Q. How long have you lived there?
A. 20 years.
Q. Have you known pretty nearly all the sales of land about there?
A. Oh, some.
Q. How much land do you own there?
A. When the railroad was laid through there I owned about 400 acres in that piece.
Q. Did you sell any of that land to the railroad?

(Objected to as not rebutting.)

A. Yes, sir. I sold about 180 or 190 acres.

244 Q. I believe you stated in your testimony-in-chief that you received for that land about $500?

A. I received from the company $500, or from Ketchum and Hiles.

Q. I want to ask you whether that sum of $500 that you received was or was not the full and fair market price of the property at that time?

(Same objection.)

A. I considered it not over half.

Q. You may state whether any other consideration was to be received by you beside the $500 and the location of the railroad and the depot in that neighborhood for that land; and, if so, what.

(Same objection.)

A. The citizens proposed if I would let the railroad have the land as a consideration of putting the depot where it now is that they would pay me $500 more, and got up a subscription to that effect for that sum.

Q. And was any of that subscription paid to you?

A. About $100.

Q. Will you state your reason for not receiving the balance of the subscription, if you did not receive it?

A. Perhaps as much as anything was they were building the railroad and the property advancing in value, and there seemed to be a fair prospect of its being worth considerable more. I thought if the neighbors could get along perhaps I could. I never asked them for any more—let it go. What they paid was paid at the time by way of turning in common deal. I was owing them some. One, if I recollect, was our merchant, and he credited me on his books, and some others made some turns under which I got paid, perhaps $100, perhaps a little more or less.

Q. After that, I understand, came on about the year 1873—what we call the panic year?

A. Yes, sir.

Q. Were times very hard then?

A. We thought so.

Q. Had the panic and the consequent depression anything to do with your not collecting the balance of the subscription?

A. By that time all of us had got to be hard enough up, and the impression at that time was that I had been doing about as well as any of them; they really did not feel like paying very much. I did not feel like urging them.

Q. At the time when you conveyed this property to the railroad you received $500. Now, I want to ask you whether at that time the railroad was definitely located on the side of the river where your property is or whether it was not so located?

(Objected to as not rebutting.)

A. In consideration of this land trade they agreed to locate the road on that side. It had been surveyed on the other side of the

river formerly, and they did as they agreed and put the depot where it now is, as the spot was proposed at that time.

Q. Were any inducements made, to your knowledge, to put the road on the other side of the river?

A. I believe a man by the name of Julius Hensel offered to give them the same amount of land, or perhaps ten acres more, if they would go on that side of the river.

245 Q. Then they came to you, did they?

A. I guess I went to them; I kind of thought I would get it on our side, if I could; they said if I would do as well by them as Hensel had offered they would come on that side.

Q. Are you familiar with the plat of this village of Arcadia and with the sales of lots that have been made there?

A. Somewhat.

Q. You state, in round numbers, the amount in cash, so far as you know it, of the sales that have been made of lots out of this property that was purchased of you.

(Same objection.)

A. I don't know as I could do that very well from the knowledge that I have; I was looking it over with our register of deeds, and we found from the records something like sixty-odd lots, I guess, sold from the company's land in Arcadia, and that they were generally sold——

(Objected to as incompetent.)

at $50 a lot, and there were a few lots marked a little higher.

Q. About how much was the total amount of the sales?

A. We were looking it over last night and, according to our estimate, there was something like $6,000 sold, I think.

(Objected to.)

Q. What was the highest price paid for any lot that was purchased? I will speak especially of the lot purchased for the Commercial Hotel. What was the price paid for that?

A. That was not exactly a lot; it was a certain piece described by metes and bounds, larger than one or two lots said to be sold; I don't know anything positively about it from personal knowledge; it was always said it was sold for $1,000.

Q. Have you a plat of this village of Arcadia?

A. No, sir; I have not; I was looking at one our county register has—that we were figuring over a little last evening; I think he could tell better about the amount of sales than I could.

Q. Will you look at this plat and state whether or not that is an accurate plat?

(The question objected to by counsel for Mr. Kelly because the paper shown the witness is not a copy from the record.)

A. Substantially accurate plat.

Q. Are you a surveyor?

A. I do surveying.

Q. Do you know that that plat is a correct plat or substantially so?
A. I think it is substantially correct.
Q. I will ask you whether the lots on this plat that are marked "sold" by the register of deeds have been examined by yourself and known to have been sold at the prices therein indicated.

(Objected to as incompetent.)

A. Many of them were sold for $50 a lot, if I recollect, but I never kept any memorandum or anything by which I could tell anything very definitely; I see the register has marked the lots according, as he says, to the deeds recorded by him, and some of them are marked $50 a lot.

(Objected to, the witness stating what the register of deeds says.)

WITNESS: I helped make out some of the deeds for those, and those were generally $50 a lot.
Q. Do you know of your own knowledge that substantially the amounts of lots represented in that plat have been sold in that village?
246 A. I have no means of knowing, only hearsay, talk, etc., as an individual outside.
Q. And your examination of the records?
A. Yes, sir; I never have been to look the records over thoroughly enough to testify to the fact.
Q. Did you make this map?
A. No, sir; Melby, I think, drew this; I have drawn a number like it.

The map referred to is offered in evidence.
(Objected to as incompetent and it is not a certified copy of the record; also because there is no evidence competent to show it is a correct plat. Marked Plaintiff's Exhibit No. 4 in Rebuttal.)

Q. I will ask you to indicate and mark with a cross the lands sold by you to the railroad company for $500?

Witness marks on the plat as requested.
(Objected to as not rebutting and incompetent.)

WITNESS: I believe those forties marked are all whole; that describes about ten acres along that forty—the southeast of the northwest of section 32.
Q. How much land is occupied, in acres, by the lots now laid out where these sales have taken place?
A. I should think about twenty acres.
Q. Twenty have been platted in that you sold?
A. Yes, sir.
Q. You say you afterwards sold another strip, did you?

(Objected to.)

A. Yes, sir.
Q. Where was that?
A. That would be ten acres in the northwest corner of the southeast quarter of section 32.

Q. How much was paid you for that land?
A. $300.
Q. How many acres were there in it?
A. Ten acres.
Q. When was that sale made?

(Objected to.)

A. That was made some time after; I don't recollect exactly how long.

Q. Did you sell this particular ten acres individually to Mr. Ketchum or Mr. Kelly?

A. Kelly, Hiles, and Ketchum, I guess; I think the deed was made to the three—I don't know but it was to Hiles and Ketchum; there was a deed made out and afterwards exchanged, after it was said to me that Hiles had bought out Kelly's interest, and he and Ketchum had it together, and I think the deed ran to Ketchum and Hiles.

Q. Did any consideration from the railroad company enter into the deed for this land that you afterwards sold?

A. No, sir; I don't so understand it.

Cross-examined by Mr. KELLY:

(Plaintiff objects to Mr. Kelly's cross-examining the witness because counsel are acting in his behalf—employed for that purpose—and are here present in the court-room.)

Q. How much land did you sell to Messrs. Hiles, Ketchum, and Kelly, either or all, in all?

A. I believe there was about 190 acres in what was first included besides the after ten acres.

Q. Then, in all, 200 acres you sold them?

A. Nearly that.

Q. How much money did you receive for the 200 acres?

247 A. I received of Hiles and Ketchum $500 and a subscription of $500 more from the citizens.

Q. That made $1,000 consideration?

A. Yes, sir.

Q. You received for the ten acres $300 more, did you not?

A. Yes, sir.

Q. Making $1,300 for 200 acres?

A. Yes, sir.

Q. Had there been any time within five years of the sale of that land for $1,300 that you could have taken as much for it? Had there been a time within five years when you could have sold that land for $1,300?

A. There was very little land selling, previous to the railroad excitement, which induced people to pay a little better, and perhaps there might have been at that particular time a chance to have sold, but times had been with us dull before, as they were after two or three years more.

Q. Were you ever offered $1,300 for that land from any other parties?

A. I don't recollect that I ever had an offer for it.

Q. Then you received from Messrs. Ketchum, Hiles, and Kelly $1,300 for 200 acres of land, which was more than you had ever been offered for the same by any other parties?

A. I received $800 from them and a subscription list of $500 from the citizens, making $1,300.

Q. You have testified that you made no strenuous efforts to collect that $500 subscribed by the citizens?

A. Yes, sir.

Q. Were you ever offered $1,300 for the same land by any other parties?

A. I don't recollect having any offer of any kind; I did not want to sell it.

Q. What did that 200 acres cost you?

A. There was a portion of it cost me $3.50 an acre when I bought it——

(Objected to as irrelevant.)

Q. What did the 200 acres cost you when you bought it?

A. I don't know as I can tell.

Q. State to the best of your recollection and belief.

A. Part of it cost me, twenty years ago, five dollars an acre, and other adjoining, that taxes were paid on, were located at the same time, about twenty years ago or a little over, and when I bought that I paid two and one-half dollars an acre for the balance of it, what I did not pay five dollars for.

Q. I will state my question again. State, to the best of your recollection and belief, the amount which you paid out for this 200 acres when you purchased them.

A. I don't recollect how much there was that came in the first and second purchase, but I think about two-thirds came in the lower-price purchase and one-third in the five-dollar per acre purchase.

Q. State to the best of your recollection and belief the amount paid out by you as purchase-money for the 200 acres.

A. $350 for one-third and the other two-thirds almost $400; about $400 for the other two-thirds.

Q. The 200 acres cost you about $750?

A. Yes, sir; besides taxes and interest on the money.

Q. I am talking about the purchase-money. How long had you owned these 200 acres?

A. I had owned one-third of it, perhaps, about a dozen years—10 or 12 years—and the other about 2 or 3 years—4, possibly.

248 Q. What had you used that land for since you came into possession by purchase?

A. Generally for pasture and hay; it was river-bottom land, a good deal—almost entirely.

Q. Did you use any of the land for any other purpose except for pasturing and hay?

A. Yes, sir; some for timber.

Q. You cut some timber off a portion of it?

A. Yes, sir.

Q. Did you farm a portion of it?

A. I don't think I plowed any at that time at all.

Q. Did you farm any of it during the 12 years?

A. I don't think I ever had any plowed land, cultivated any land upon that, although I sowed hay seed upon it, timothy, and red-top; considerable of it was dry meadow.

Q. Did you ever lease any portion of the two hundred acres during the time you held possession by right of purchase?

A. Only for a year at a time for cutting hay and sometimes for pasturage for my neighbors.

Q. At the time these defendants purchased that two hundred acres was there any Government land for sale in that vicinity?

A. There was a few forties and fractions of river-bottom lands up and down the river at that time that were vacant, I believe.

Q. Was there any Government land for sale adjoining to some of this land purchased by these defendants?

A. There was one forty, I think—Government land adjoining one forty of this.

Q. Was not the Government land adjoining this property then as good as the property itself?

A. I should think not quite.

Q. Do you testify the Government land was not worth as much as the average of the two hundred acres?

A. Yes, sir.

Q. How much less was it worth?

A. Well, there was—it was somewhat cut up by the river; there was some pieces of it that was very good, as good as the generality along the river, but, being cut up by the river, it was not considered as of as much value, as it could not be disposed of together in sufficient quantities to amount to much; I don't know; I never heard any one say.

Q. How much less in dollars and cents per acre, in your judgment, was this Government land worth in the neighborhood of this two hundred acres sold by you to these defendants?

A. Some portions of this I sold was good land and laid advantageously, while these other pieces—being isolated and small, not sufficient to amount to anything for pasturage, and not much hay on them, a little timber, a little hay, a little dry land, and the like of that—I don't know what the comparative value is.

Q. State, to the best of your judgment, what the difference in value was.

A. Probably, if you got a chance to sell them to the neighbors who join, you could get half as much for it.

Q. Do you swear that Government land was not worth more than half of the average value per acre of the two hundred acres sold these defendants?

A. I should not think it was worth more than half, certainly.

Q. How much was Goverment land worth at that time?

249 What was the price asked by the Government at that time for the land in the same vicinity?

A. I don't recollect whether it was reduced to a dollar an acre; it seems to me it was at that time. The land was reduced through that section of the county, and those odd pieces——

Q. You testify that this Government land was worth about half as much as your land and that the price was about one dollar an acre. Is that your testimony?

A. Yes, sir; that is what it cost from the Government.

Q. Now, state whether there was not a mineral spring on some of the vacant Government property adjoining a portion of this two hundred acres.

A. There has been one discovered since that is rather a fine spring, I think, and it is on one of those Government forties.

Q. Was not this spring in existence at the time of the sale of this two hundred acres to the defendants?

A. Yes, sir; I have drank out of it occasionally for twenty years.

Q. Did not one or all of these defendants purchase from the Government 80 acres adjoining a portion of the two hundred acres purchased from you?

Q. I could not say; I know he got two forties; Ketchum located two forties, but I think one was divided by another forty; they might both have touched, or one touched this and the other that; I would not be positive; I never paid particular attention.

Q. Then these defendants or one of them may have purchased eighty acres of land adjoining this two hundred acres?

A. Yes, sir; it might be possible that the second forty touched on the other side the first forty. I think it would be cornering to it if it touched it at all. Maybe I am mistaken about it. I would not be positive about that.

Adjourned till 11 o'clock a. m.

11 O'CLOCK A. M.

Parties appeared as before.

Witness recalled for further cross-examination by Mr. KELLY:

Q. You stated that a quantity of these lots had been sold, and you used the expression "company's lots." A good many of the company's lots had been sold. What did you mean by that?

A. We have always called them company's lots, those belonging to Hiles, Ketchum, and Kelly, and those that belonged to me were village lots.

Q. Then that was a general way of expression to indicate your lots and lots not belonging to yourself?

A. Yes, sir; that has been the way we have termed it at home.

Q. You knew you made the deed to Messrs. Kelly, Ketchum, & Hiles?

A. Yes, sir.

Q. You knew you received the consideration from them?

A. Yes, sir.

Q. Did you not sell to one or more of these persons ten acres of land for three hundred dollars?

A. Yes, sir; I sold ten acres of land to—well, my impression is—I

may be wrong, however, but my impression now is—that I sold that to—no, I guess that was to Ketchum, Hiles, & Kelly; I think that was sold before the deeds were exchanged. The deed never was recorded—the first deed made out; it did not describe the land just right where the northeast and southeast half of the northeast
250 quarter of the southwest quarter came together, the south half designing to belong to Briggs and the north half to the company.

Q. What do you mean by the company?

A. Hiles, Ketchum, & Kelly.

Q. You testify that the first deed or the first deeds was given to Mr. Hiles?

A. Ketchum and Kelly.

Q. Was there not a second deed given to two only of those parties?

A. I think so. I think the first deed was not recorded, and it was desired to divide those two twenty-acre parts of the 40 equally by a main street, and, the way the village was laying and the street drawn, there was a little fraction of a few feet only that varied from that line and in consequence of that. The second deed regulated that they thought they might as well make a second deed, and, if I understand it right and recollect it right, some of the parties, either Ketchum and Hiles or Hiles alone, had bought your interest, and consequently the deed ran to the two instead of the three.

Q. You knew, then, from the transactions that the defendants claimed to own this land?

A. Of course.

Q. And you knew that the defendants platted the land or some of them platted the land?

A. Yes, sir.

Q. You knew also, did you not, Doctor, that one or more of these defendants was giving deeds of the lots?

A. Yes, sir; for I helped execute some of them and helped plat the land myself.

Q. Who engaged you to plat the land?

A. I don't know that, but it strikes me the talk was with Hiles about the platting, but I am not certain. It might have been Hiles and Ketchum or Ketchum alone. I don't remember, but I should think, it is my impression, it was Hiles.

Q. Did you ever know of any deed having been given by any one of the lots in the plat referred to by you in the name of the railroad?

A. I think not.

Q. Then, so far as you know, the defendants or some of them always claimed this land, had it in possession, and sold lots, giving deeds in their own names?

A. Yes, sir; there were quite a number of deeds given at my house at one time. About the first deeds given, I guess, were twenty or thirty, perhaps over thirty executed in one day, and I think that Hiles and Ketchum executed them.

Q. Over what period of time did this purchase of land and the platting of the land and the sales of the lots spread?

A. I don't remember exactly, but it was considerable time from the time the sales commenced till the deeds were executed; perhaps the next spring after the sales commenced in the fall and winter or summer after; I should think they must have commenced about September, perhaps; I don't remember; it was either the summer or fall it was platted, and you can ascertain that from the register.

Q. Is it not a fact that from the time of the purchase of that land of you seven or eight years at least have elapsed?

A. Yes, sir.

Q. Is it not also a fact that during all of that seven or eight years or more, to your knowledge, these defendants, or one or more of them, have always claimed that land and have sold lots from it?

251 (Objected to as immaterial.)

A. Yes, sir. It has been in the neighborhood of seven years, at any rate, since they have been given deeds for the lands, lots, and property.

Q. Did you ever hear the titles to the lands so deeded by them being called in question, except by this suit?

(Same objection.)

A. I don't recollect now when I did first hear of it; not very long since.

Q. Did you ever hear of any other question being raised about their right to deed, except through this suit?

A. I don't remember any but this suit?

Q. Did these defendants, or either of them, make any valuable improvements on the land bought of you at Arcadia?

A. I should say so. Mr. Hiles has done some considerable building on the premises from time to time.

Q. Have not the defendants, or some one of them, enhanced the value of the property of Arcadia by reason of improvements made by him on them?

(Objected to as immaterial.)

A. Well, if I am to answer it, I should say that the property has not been very much enhanced in value. It has rather gone down. There was a time it advanced largely, as we fancied and supposed. Lately it has not been very salable or anything of the kind, and probably the buildings would not realize the cost of building.

Q. We are talking about the two hundred acres bought of you. Have not the defendants, or some one of them, greatly improved these two hundred acres by improvements made?

A. Oh, yes sir; there have been improvements made, as I stated before, by buildings and otherwise, more or less.

Q. Have not the defendants, or some one of them, ever constructed a ditch at a large expense and an embankment to improve the value of the land?

(Same objection.)

A. Mr. Hiles made an embankment that was an advantage—considerably so—to the village.

Q. Improved the value of this two hundred acres, did it not?

A. Well, it did not have anything to do with any except a portion—say, 40 acres—in the village, but it greatly benefited that, at least. We were subject to floods from the creek above. That embankment is a benefit.

Q. Your attention has been called to a plat here in court. Have you testified that was correct?

A. I said how I knew it to be correct, because I surveyed and assisted in surveying the whole of the village.

Q. Did you assist in making that copy?

A. No; not this copy; but I have made several like it, and am well enough acquainted with it to say that it is substantially correct.

Q. What, in your judgment, was the probable cost of the improvements which these defendants, or any one of them, have or has made upon this land bought of you?

(Objected to, the witness not having been shown to know anything about the cost of the improvements and also not proper cross-examination.)

252 A. If I am to answer it I should say there were several buildings upon the plat built by Hiles principally that are very comfortable buildings and cost considerable money.

Q. State, to your knowledge, what the cost of the improvements was.

A. Oh, I do not really feel competent to.

Q. Do you think it was ten thousand dollars?

(Objected to; witness knows nothing about the matter, and says so.)

A. There was one brick building, the first one built, probably cost at least three thousand dollars.

(Plaintiff objects to the witness giving any suppositions or probabilities. If he knows anything about it he can state; if he does not he can say he does not.)

A. I don't know the cost of the building exactly. I never paid any attention to it or made any estimate, in fact.

Q. You have lived in Arcadia ever since the plat was made?

A. Yes, sir.

Q. Bought and sold lots there?

A. Yes, sir.

Q. Built houses in your day, have you not?

A. Yes, sir.

Q. You have a general idea of what the cost of ordinary dwelling-houses and stores is, have you not?

A. I may have some general idea, but I should hardly wish to say that I could price one exactly at its par value.

Q. Did you ever buy a house?

A. Yes, sir; I have bought some houses.

Q. Did you ever sell any?

A. Yes, sir.
Q. Did you ever keep a brick yard and sell bricks?
A. Yes, sir.
Q. Ever keep a lumber yard and sell lumber?
A. Not much.
Q. Did you ever deal in lumber?
A. Oh, yes, sir; some considerable.
Q. Then state what, in your judgment, was the cost of improvements made by the defendant Hiles at Arcadia in the way of brick and wooden buildings.
A. I really don't know how many buildings he has built there. There has been built by himself and others upon his land, some of it on land not platted—I don't know whether he built the buildings or some one else; I never paid attention to know exactly how the thing was done; there is a great many, quite a number, of houses been built on land not platted that I sold them; some comfortable houses; some cheap houses.
Q. Is it not likely that the improvements made by Mr. Hiles at Arcadia cost at least $10,000?
A. I presume they cost that.
Q. Might they not have cost $15,000?
A. I never made an estimate really of what I do know anything about, and I don't know much about more than the two brick buildings. I was best acquainted with them, because I furnished a portion of the materials, and then the new mineral spring building by the depot has been built; I presume, I should think, what he has built there cost ten thousand dollars or more.

(Objected to, all this testimony; the witness has stated in the outset he does not know, and his suppositions are not evidence.)

Q. Have you a season pass over the Green Bay and Minnesota railroad?
A. I have had.
Q. Have you a pass at present time?
253 A. I think I have, and I think I have had for several years.
Q. Have you had a pass over this road given you by the receiver ever since this suit was instituted?
A. I have had one before that, and have continued since.
Q. Did you have a pass all the time before the suit was instituted?
A. Not all, I guess.
Q. Did you have a pass for the year before this suit was instituted?
A. I don't remember; I don't know at what time this suit was instituted—at what date.
Q. Did you have a pass in 1879?
A. Yes, sir; I think I did.
Q. Did you have a pass in 1878?
A. I think not.
Q. How came you to obtain a pass in 1879?

(Objected to as immaterial.)

A. I don't recollect now.
Q. Did you apply for a pass?
A. I believe I did.
Q. On what grounds did you apply for a pass in 1879?
A. The same that I applied to Mr. Ketchum, when he was president. I thought I had benefited the railroad company enough to entitle me to a pass.
Q. Did you so state to the receiver?
A. I presume so; I don't remember, but I presume so.
Q. Did you apply for a pass in 1878, Doctor?
A. No, sir; I think not.
Q. Why not?
A. Because I was not doing much traveling on the road then. Lately I have been doing a little more.
Q. Did you apply for a pass in 1879, before anything was said to you about this suit?
A. What time was this suit commenced?
Q. I don't remember.
Mr. LARNED: July, 1879.
A. I think I applied January 1st, 1878.
Q. But you say you did not get a pass in 1878?
A. January, 1879, I mean—at the closing of 1878.
Q. Are you certain about that?
A. I think that was so. I think I had one for the year 1879 and one for the year 1880.
Q. Did you apply in person or by letter?
A. By letter.
Q. To whom did you address that letter?
A. If Mr. Case was managing the road of course I applied to him. I don't remember who was the general manager. I think he was, however.
Q. Did you apply for a pass in 1880?
A. Yes, sir.
Q. When in 1880 did you apply for a pass?
A. The 31st of December I returned my old pass, with the request to send me a new one if he felt so disposed.
Q. Did you apply for a pass in 1881?
A. Yes, sir.
Q. To whom did you make that application?
A. I returned the old pass with the same request both times, the 31st of the month, December, and received an envelope with a pass in both times.
Q. How did it happen you had no pass for 1878?
A. I don't think I ever applied for one—not till the close of the year 1878. I thought it would be convenient to have one. If I did not get one it would not harm me. They have been very
254 obliging with me thus far. When I asked for one I got one always, of Mr. Ketchum, or any of them.
Q. I will ask you a question again, which you did not answer when I asked it before. Did you apply for a pass for 1879 before anything was said to you about this suit, or after?

A. I think I never had heard of the suit at that time at all. I have not taken any bonds, and was not posted in railroad business at all. I think it was before the commencement of this suit entirely. I did not know there was any such thing in contemplation that I know of.

Q. Did you keep a copy of that letter or application?

A. No, sir.

Q. Is that pass you now have, and on which you came East over the Green Bay & Minnesota railroad, this time, an annual pass?

A. Yes, sir.

Q. Is it revocable at the option of the receiver or not?

A. I don't recollect; the other was.

Q. Have you the pass with you?

A. Yes, sir.

Q. Will you look at it and see if it is revocable at the option of the giver or not?

(Objected to as immaterial.)

Q. You understand this pass to be a revocable pass, do you not?

A. I suppose they were all of them of that class. I don't know whether it is or not. I did not take interest enough in it to examine it.

Q. What inducement or inducements did the defendant Hiles hold out to you to sell the land in question to him at less than its actual value?

A. I don't know as any in particular. Mr. Ketchum said most on the subject of railroad interest.

Q. Then Mr. Hiles held out no special inducements?

A. I don't remember about Hiles saying so much. Mr. Ketchum was—I did not become acquainted with him so soon as I did Ketchum.

Q. You say Mr. Hiles did not hold out any special inducements?

A. I don't recollect of his making any remarks in particular.

Deposition of John O. Melby.

JOHN O. MELBY, called by complainant, being duly sworn, testified:

Q. Where do you live?

A. In Whitehall, Trempealeau county, Wisconsin.

Q. Are you of lawful age?

A. Yes, sir.

Q. What is your occupation?

A. I am register of deeds of Trempealeau county.

Q. Is the town of Whitehall in that county?

A. Yes, sir.

Q. Arcadia?

A. Yes, sir.

Q. Please look at the plat now shown you, being the same shown to the previous witness. State whether that plat is, to your knowledge, a correct plat.

(Objected to as incompetent and not rebutting.)

A. It is correct as to the situation of the lots; there might be something in the official plats marked down about bearings and so on that I have not put on this.

Q. Did you make that plat?

A. Yes, sir.

Q. It is substantially correct, is it?

A. Yes, sir; I don't know anything to the contrary.

Q. All the difference between that and the official plat is that there is some things on the official plat you have not put down on this.

255 A. Yes, sir.

Q. But what you have put down here is, as I understand you, correct?

A. Yes, sir; I think it is.

Q. Look at that plat and state, in round numbers, how many lots in that plat have been sold by the owners thereof, the original owners.

(Objected to as incompetent and not rebutting.)

A. Well, I have no knowledge of the sales, excepting the deeds that appear on record.

Q. Have you examined the records with reference to finding how many lots have been sold of the number of lots originally in that plat?

A. Not carefully.

Q Have you examined them sufficient to find any sales?

(Same objection.)

A. Yes, sir; I believe I found between 50 and 60 lots sold on what is known as the original plat on the records.

Q. Who were the grantors in those deeds?

A. My recollection is Hiles and Ketchum.

Q. The grantees? Various parties, were they?

A. Yes, sir.

Q. State about the average price per lot that was paid according to the deeds you have on file in your office.

(Same objection.)

A. Some of the deeds, fifty dollars a lot.

Q. State the highest price for any one sale—take the Commercial Hotel lot.

(Same objection.)

A. I believe the deed said $1,000 for the parcel of land where the Commercial Hotel now stands.

Q. Look at this lot numbered on the plat No. 9, and state how much was paid for that lot.

(Same objection.)

A. That is another plat; that is not the original plat; that is known as the Hiles and Ketchum addition to the village of Arcadia.

Q. How much was that lot sold for?

A. That lot, that portion of land, was sold—a piece had been sold before it was platted, and it was described by metes and bounds at first, and afterwards, I believe, the deed states it is supposed to contain lot —, in block 23, of Hiles & Ketchum's addition.

Q. What is the consideration of the purchase?

(Objected to as incompetent. The deed is the best evidence.)

A. $325.

Q. How much is the consideration for the purchase of lots one and two in the same addition?

(Same objection.)

A. Lots 1 and 2 sold together, $350.

Q. The most of the other lots which are marked on this plat as sold, the price, you say, was about $50 a lot?

A. I can't find any less than $50.

Q. Are there any more?

A. I find some in block 10 sold for $200 apiece. I see here is lot 5, Nos. 1, 2, 3, 4.

256 Q. Lot 4. How much did that sell for?

A. $200.

Q. Lot 3?

A. $200.

Q. Lot one?

A. I think $150. I have no personal knowledge of it.

Q. Will you please look at this plat now shown you and state what it is?

(Plat marked "Exhibit No. 5" in rebuttal.)

(Objected to as incompetent and not rebutting and because the map shown to the witness is not certified to be a copy from the record.)

Q. State what the memorandum or plat you hold in your hand is?

A. A copy in a smaller scale of the original plat now on record in the register's office.

Q. Of what place?

A. Whitehall.

Q. Did you make the map?

A. Yes, sir.

Q. Is it substantially correct?

A. I made it correct enough to answer my purposes.

Q. What purposes were those?

A. Well, to assist me in indexing tracts sold outside of the plat, if any, and to know what forties the plat were on in making out abstracts, so I could tell what forties the plat was on; that was the object in making out this.

(Plaintiff offers this plat in evidence, to be marked "Exhibit No. 5" in rebuttal.)

(Objected to as incompetent and immaterial and not certified to be a copy from the record; also because not testified to be original.)

Q. State how many lots have, from your knowledge arising from your position as recorder of deeds of that county, been sold in the town of Whitehall since the property there was taken and platted in the name of one or more of the defendants in this case.

(Objected to as incompetent and not rebutting.)

A. I believe between 80 and 90.

Q. About what was the average price paid for those lots?

(Same objection.)

A. So far as I can judge, I say the average price has been no less than $50; some have been very low; some as high as $200.

Q. How many acres of land is embraced in the part that is platted in the town of Arcadia?

A. Do you mean was platted by Hiles and Ketchum?

Q. Yes, sir.

(Objected to as incompetent and not rebutting.)

A. Well, between 20 and 30 acres, I should judge. It is a guess.

Q. About how many acres are embraced in this plat of Whitehall?

(Same objection.)

A. I answered that what was platted by Hiles and Ketchum I should think was 20 or 30 acres.

Q. Now, at Whitehall, about how much?

A. There has been two additions made to Whitehall. One addition I have not put down, maybe because this plat is made some two years ago, at least, and I should say about 40 acres.

Cross-examined by Mr. KELLY:

Plaintiff objects to Mr. Kelly examining the witness.

Q. How long have you been register of deeds of Trempealeau, Co.?

257 A. For the last six years; I am register now, re-elected for two years more.

Q. You have served as register for over six years?

A. Yes, sir.

Q. During this six years where did you live?

A. In 1875 and 1876 I resided in Galesville, Trempealeau Co.

Q. And since 1876 you have resided in Whitehall, have you not?

A. No, sir; I resided in Arcadia in the year 1877 and up to the 15th of March in 1878; I believe the office was removed to Whitehall.

Q. During that six years you have been frequently in Arcadia and Whitehall?

A. Yes, sir.

Q. Are not plats of the village of Whitehall and of Arcadia on file in your office?

A. They are on record.

Q. You say these plats presented in court, which are not copies of your record, are substantially correct. Would you purchase or sell lots from them without any other evidence? Would you consider it safe to do so?

A. Considering the location, it would serve me in placing the location of each lot; it would be sufficient for my purpose if I should buy; it don't give the size of the lots or anything of that kind.

Q. So far as the metes and bounds are concerned you would not think them correct plats from which to deed?

(No answer.)

Q. Let me ask another question, if you cannot answer that. Would you, as register of deeds of Trempealeau Co., certify these plats that have been presented during your direct evidence to be correct? Would you certify, as register, that these plats are correct and true copies of the original?

A. No, sir.

Q. You own a house and lot in Whitehall, do you not?

A. Yes, sir.

Q. Of whom did you purchase that land?

A. Well, I purchased the house and lot of Graham, our station agent up there.

Q. Did you purchase any land of these defendants?

A. Yes, sir.

Q. From which defendant did you purchase any land in Whitehall?

A. From D. M. Kelly.

Q. Did D. M. Kelly give you a deed of the piece of property purchased of you?

A. Yes, sir.

Q. Who executed that deed?

A. D. M. Kelly executed it.

Q. Did you put that deed on record?

A. Yes, sir.

Q. As a matter of fact, had not these defendants, or two of them, at least, been in the habit of executing deeds to lots in Arcadia and Whitehall, which were recorded by you?

A. Hiles and Ketchum executed deeds in Arcadia and Ketchum alone in Whitehall, I think.

Q. Did not D. M. Kelly, one of the defendants, also execute deeds to lots in Whitehall?

A. Yes, sir; later, in the last year.

Q. Is it not a fact that since you have been register of deeds you have been called upon frequently to record deeds of lots at Arcadia and Whitehall, either executed by one or more of these defendants?

A. Yes, sir.

Q. Have you not recorded such deeds during each year of your term of office as register of deeds of Trempealeau county?

A. I presume several.

258 Q. Then, during all the six years of your service as register of deeds of Trempealeau county, you have been recording

deeds of lots in Whitehall and Arcadia, signed by one or more of these defendants?

A. Yes, sir.

Q. And you took a deed from D. M. Kelly of a lot in Whitehall within two or three years, did you not?

A. It was in a portion of land described by metes and bounds that I took a deed of from Mr. Kelly.

Q. When did you take that deed?

A. In the fall of 1879; I believe in September.

Q. Did you record a deed of any village lot at Whitehall or Arcadia where the railroad company was the grantor?

A. No, sir.

Q. Did you ever record a deed of a village lot at Arcadia or Whitehall where the railroad company was one of the parties executing such deed?

A. By the railroad company whom do you mean?

Q. I mean the railroad company—incorporated company.

A. No, sir.

Q. You said you had lived at Arcadia and at Whitehall. State if the property at those two points is not worth far more, I mean the platted property, than it was before it was platted.

A. Ask the question over again.

Q. Is not the platted land at Arcadia and Whitehall worth far more now than it was before it was platted into village lots?

A. I should judge so; I knew nothing about the land prior to the platting.

Q. You were acquainted with the value of lots in Trempealeau county, were you not?

A. I know what property is selling at.

Q. And you knew for six years what property was selling at, did not you?

A. Yes, sir.

Q. From the deeds?

A. I knew them part from personal knowledge.

Q. Then, in your judgment, the property in Arcadia and Whitehall is worth far more to-day than it was before it was platted into lots?

(Objected to as immaterial.)

A. It is worth more now since the village has been established there.

Q. In your judgment, are not the unsold lots in the village plats in Arcadia and Whitehall worth more to-day as lots than they were before the plats were made?

A. Yes, sir; the lots are worth more than the land was before the platting.

Q. A good deal more?

A. Yes, sir; for building purposes.

Redirect examination:

Q. Was the plat of Arcadia in Hiles' and Ketchum's name made before or after the railroad was located there?

A. I don't know about that.

Q. Do you remember what year the plat was made?

(Objected to as incompetent, the record being the best evidence.)

Q. I mean the original plat?

A. It was recorded as platted in the fall of 1873, but I can't say positively.

Q. The railroad was built in 1872?

A. I was not in Arcadia until 1876; I think it was.

Q. Do you know when the railroad was built through Whitehall?

259 A. In 1872.

Q. Do you know when the plat was made there?

A. A little prior to the plat at Arcadia, because I see it recorded ahead of the Arcadia plat.

Q. How much ahead?

A. I could not state, not having the records with me.

Q. Was it prior to the year 1873?

A. I think not.

Recross-examined by Mr. KELLY:

Q. Just think back and state, as a matter of fact, if you do not know that the railroad was not constructed through either Whitehall or Arcadia until the fall of 1873, that the railroad did not go through until the fall of 1873, and you can consult, as a memorandum, Dr. Briggs on that point.

Dr. BRIGGS: I guess that is correct.

WITNESS: That is correct.

Plaintiff's rebutting testimony closed.

The defendants reserve the right to introduce such surrebutting testimony as they may desire after having been furnished with a copy of the testimony taken yesterday and to-day.

The plaintiff also reserves the right, in case any surrebutting testimony is introduced, to introduce testimony in answer thereto.

Stipulation.

It is stipulated that all notices for taking testimony by either party shall be upon eight days (exclusive of Sabbath), but by this stipulation neither party waives their right to object to the competency of the testimony as not being entitled to be introduced.

JANUARY 28TH, 1881.

Hon. E. H. Ellis, of counsel for defendants, appeared, pursuant to notice, for the examination of the witness Earle; T. G. Case, Esq., appeared as counsel for the complainant.

Counsel for complainant notified by the examiner that the witness, D. M. Kelly, had applied to have his deposition, as copied from

the minutes of the reporter who took the same, changed in certain parts to make it, as he claimed, correct. By consent, the examination of the witness Earle adjourned to January 29th at 9 a. m.

January 29th, 1881, at 9 a. m., came the Hon. E. H. Ellis, of counsel for the defendants. No one in attendance on behalf of the complainant. On the application of defendants' counsel, and upon the affidavit filed, examination of the witness Earle adjourned to the 10th of February next, at 2 o'clock p. m., of which eight days' personal notice is required to be given to the complainant's attorneys.

FEBRUARY 10TH, 1881.

The parties meet pursuant to adjournment, the plaintiff being represented by T. G. Case, Esq., and the defendants by Judge Ellis, and the cross-examination of the witness Earle is begun.

T. H. EARLE recalled.

(Questions by Judge ELLIS:)

Q. Have you figured up the expenses both ways coming down here, being here, and returning?

A. Judging from the expenses here, it amounts to $30.30. Those are the actual expenses, judging from when I expect to get home and the expenses coming, without including attendance fees.

Mr. CASE: We object to paying attendance fees.

260 Cross-examination by Mr. CASE:

Q. You said in your direct examination that you wrote a contract in the month of October, 1873, from D. W. Wade to Henry Ketchum. Do you recollect what the circumstances were under which you came to make that contract?

A. We had had previous talk with Mr. Wade concerning the property there.

Q. What was the effect of that talk or what was the substance of it?

A. We did not close up anything the first time we were there?

Q. What was the substance of the talk?

A. The talk was of the purchase of certain tracts of land, about seven forties in all.

Q. For whom did you want to make the purchase?

A. Ketchum.

Q. Had the road been built through there at that time?

A. Not completed; the track was laid through there.

Q. Do you say the track was laid through there?

A. I think it was.

Q. Depot been located?

A. No, sir.

Q. Had the site of the depot been located?

A. No, sir.

Q. Did Mr. Wade offer to you or to Henry Ketchum in your presence to give forty acres of land to the company?

A. No, sir.

Q. The depot was afterwards located on this land or before?

A. Afterwards.

Q. Had you agreed upon the site of the depot at that time—at the time of this conversation with Mr. Wade?

A. No, sir.

Q. What were you doing at that time?

A. I was employed by the Green Bay road.

Q. What were your duties?

A. They were numerous. I was general purchasing agent. That was my principal duty. When I was not on duty there I was at Mr. Ketchum's call.

Q. Did you purchase any right of way?

A. Yes, sir; I picked up, I think, some forty miles of it.

Q. Along through the Trempealeau Valley?

A. Yes, sir.

Q. How long had you been in the employ of the company prior to that alleged conversation said to have taken place between you and Mr. Wade?

A. Ever since the road had been built to New London.

Q. Did you purchase wood and ties for the road at that time?

A. Yes, sir.

Q. What relation are you to the defendant, Henry Ketchum?

A. Son-in-law.

Q. Were you engaged in the purchase of right of way immediately contiguous to Whitehall—where Whitehall now stands?

A. I commenced at Merrillon. I did not buy; I got donated, I got people to donate, more or less from Merrillon to Winona. It was not in the form of a contract—in the form of sort of a subscription.

Q. You did not get any contract from Mr. Wade for his right of way?

A. No, sir; he was not a resident at that time of the valley; he lived at Galesville.

261 Q. Was it not during 1873 you secured most of the right of way in Trempealeau Valley that was secured by you?

A. If that is the year the irons were laid it was.

Q. You testified you made this purchase from Ketchum during the year 1873.

A. I think it was 1873; yes, sir; in the spring of 1873, before the track was being located.

Q. The line had been surveyed, had it not?

A. No, sir. I even secured it ahead of the survey of the line in several instances.

Q. That is, the right of way?

A. Yes, sir.

Q. Did you know where the line was to be located?

A. It is a narrow valley; if you go clear across it you know pretty nearly.

Q. In what month of 1873 did you make this purchase of Mr. Wade?

A. I should judge probably in the month of October. I have not seen the contract since, nor any of the papers made at that time. I speak from memory, of course.

Q. The line then had been surveyed through the valley, had it not, and the road built?

A. When they took the contract?

Q. Yes, sir.

A. Yes, sir; the iron was laid through this property.

Q. Where did you have this conversation with Mr. Wade?

A. At his house.

Q. At what place?

A. On the farm he now lives on.

Q. Near Whitehall?

A. Within two miles.

Q. When did you leave the service of the company?

A. In December, 1873.

Q. Your duties were then about of the same character from the time you took charge, at the time the road was built to New London, until you left the company, were they not?

A. I was simply a purchasing agent. The way I came to pick up — right of way Mr. Kelly was East; we had no funds to buy ties with; I was idle, so I went down into the valley and went to work.

Q. Were not you paid upon vouchers in which mention was made of your right-of-way services?

A. I don't know; I don't think that was mentioned in the vouchers; still I would not be positive; I think not.

Redirect examination by Mr. KELLY:

Q. What purchase did you make in the spring in regard to which you have testified?

A. The right of way.

Q. You did not refer to the purchase of the Wade property when you spoke of having purchased property in the spring?

A. Not at all, sir.

Q. Mr. Earle, you have had considerable experience in buying and selling property in the Trempealeau Valley for six or eight years, have not you?

A. Yes, sir.

Q. And you have come into contact with a great many farmers and have been aware of a great many sales of real estate in Trempealeau Valley during that time?

A. Yes, sir.

Q. You stated in your direct examination that the Wade property, in your judgment, was not worth over $3,500, the amount paid for it by Mr. Ketchum. That opinion is founded, is it not, upon your knowledge of the sales of real estate in the Trempealeau Valley?

A. Yes, sir.

262 (Objected to the form of the question; a further objection, as being in the nature of redirect examination, not being re-

sponsive to anything elicited on the cross-examination by the counsel for complainant.)

Q. You have stated in your direct examination that the value of that property was not over $3,500. State now, please, why you say that.

A. From what the property brings adjacent to it. Mr. Duer has a piece of land adjoining which was sold this last year for $1,000, comprising 120 acres, mostly improved land.

(Objected to as being wholly irrelevant.)

Q. How long have you resided at Whitehall?

A. Since December 20th, 1873.

Q. That is on the Green Bay and Minnesota railroad, is it not?

A. Yes, sir.

Rebutting testimony on behalf of the defendants resumed before the examiner, Milwaukee, April 23rd, 1881.

Present: Theodore Case, Esq., of counsel for the complainant; the defendants in person, accompanied by Matt. H. Finch, Esq., of counsel.

W. R. Hancock Recalled.

Defendants recall W. R. HANCOCK, who testifies as follows:

Questions by Mr. KELLY, who appears on his own behalf and as counsel for the other defendants:

Q. You have been sworn in this case and have given testimony previous to this?

A. Yes, sir.

Q. State when you became connected with the Green Bay & Minnesota Railroad Company, and in what capacity.

A. In May, 1872; I was treasurer.

Q. How long did you remain treasurer of the company?

A. Until December, 1877.

Q. Were you, during the time you were treasurer of the company, in the habit of making out the monthly reports and statements at the request of the general manager?

A. Yes, sir.

Q. State when you commenced to make out such reports and statements as nearly as possible and when you ceased to make them out at the instance of D. M. Kelly, general manager.

A. I do not know as I could give the time; I think in the year 1875, some time, the first monthly reports were made. I am not positive.

Q. It was about that time?

A. Yes, sir.

Q. And did you make such reports monthly thereafter for several years?

A. Yes, sir; such reports were made monthly until I ceased to be treasurer of the company, in December, 1877.

Q. And you ceased to make the reports and statements referred to at the time that D. M. Kelly ceased to be general manager of the railroad company, in December, 1877?

A. I ceased to make reports to D. M. Kelly. I have made reports since that time.

Q. You ceased at that time to make reports at the instance of D. M. Kelly, general manager?

A. I did.

Q. What were those reports and statements?

263 A. One report of operating expenses and earnings for the month; also at the end of each month made a report of the financial condition of the company; also the amount of constuction charge.

Q. Anything else?

A. Those are all the reports, I think, I made.

Q. Any further statements?

A. I don't recollect of any now.

Q. Were not the reports and statements as follows: Of the earnings and disbursements for each month——

(Objected to as leading.)

Q. I will ask in a different way. Will you produce copies of any such reports and statements made for the months of October and November, 1877, at the instance of D. M. Kelly, general manager?

A. I have copies of them.

Q. Will you produce them?

(Witness produces copies referred to.)

PLAINTIFF'S COUNSEL: We offer the reports in evidence, provided they are not offered by the defendants.

Defendants' counsel offers in evidence a balance-sheet—financial statement of November 1st, 1877. It is marked "Defendants' Exhibit A in Rebuttal."

Also statement of gross earnings and operating expenses in the month of October, 1877, marked "Defendants' Exhibit B in Rebuttal."

Also schedule of items charged to construction equipment in 1877 up to November 1st. It is marked "Defendants' Exhibit C in Rebuttal."

Also balance-sheet giving financial condition December 1st, 1877, marked "Defendants' Exhibit D in Rebuttal."

Also statement of gross earnings and operating expenses for November, 1877, marked "Defendants' Exhibit E in Rebuttal."

Also schedule of items charged to construction equipment for 1877 up to December 1st of that year, marked "Defendants' Exhibit F in Rebuttal."

Q. Were you in the habit of making out any other reports and statements monthly, except these, copies of which you have just introduced?

A. No, sir.

Q. Were you in the habit of making, during the year, any other reports or statements, except those, copies of which you have introduced here?

A. We used, at the end of the year, to make an annual statement which embraced all those.

Q. Did that annual statement cover any ground that those monthly statements did not cover?

A. No, sir.

Cross-examined by Mr. THEODORE CASE:

Q. Under whose direction did you make these reports?

A. Under the direction of Mr. D. M. Kelly, general manager.

Q. Did he define to you what reports he wanted made?

A. Yes, sir.

Q. Then you only made such reports as he instructed you to make?

A. That is all.

Deposition of T. P. Bingham.

T. P. BINGHAM, called by defendant, being sworn, testified:

264 Q. State your residence and occupation.

A. Green Bay, Wisconsin; my occupation is a clerk.

Q. You are over 21?

A. Yes, sir.

Q. Are you acquainted with the parties to this suit, Timothy Case, receiver, against D. M. Kelly, Henry Ketchum, George Hiles, and the Arcadia Mineral Springs Company?

A. I know all parties, except the Mineral Springs Company.

Q. State if you ever heard any conversation between the plaintiff, Timothy Case, and one of the defendants, D. M. Kelly, in regard to right of way and depot ground matters.

A. I did.

Q. State when the conversation was had which you heard and where.

A. In the summer or fall of 1878, I think, in D. M. Kelly's office.

Q. Do you know when the defendant, D. M. Kelly, left the service of the Green Bay & Minnesota Railroad Company?

A. The 28th of December, 1877.

Q. Then this conversation you heard was the following year after D. M. Kelly ceased his connection with the company?

A. Yes, sir.

Q. State as nearly as you can the conversation had at this time between the parties named.

A. Mr. Timothy Case came into Mr. D. M. Kelly's office.

Q. State who was present.

A. Mr. Theodore Case came with him. Mr. D. M. Kelly was present and myself.

Q. State what was said by all the parties present in regard to the matters referred to.

A. We were talking about right of way.

Q. Who commenced the conversation about the right of way?

A. I think Timothy Case.

Q. State what was said by Mr. Case.

PLAINTIFF'S COUNSEL: Mr. Bingham, have you any memoranda, or is this simply from recollection?

A. I have no memoranda.

Mr. KELLY: State what was said at that time in regard to right of way and depot grounds.

A. Mr. Case commenced by asking about the right of way; said he found from his books or record—I ain't sure which—that Mr. Kelly owned the principal part of the right of way, or something of that kind, and wanted to know what Mr. Kelly would do about it. Mr. Kelly said that he was mistaken about his owning the principal part of the right of way; that he, Mr. Kelly, did own several depot grounds and the right of way connected with them and land along the line of the road which he did not propose to give away or sell to the railroad company. I don't recollect just what came in next or what further was said about the rights of way or depot grounds or anything else during that interview. Mr. Kelly said he owned several depot grounds, with the right of way connected with them, which he would quitclaim to the road without expense to the road, provided they would give a bond indemnifying him against losses from having been or being surety on bonds where the suits had been appealed—I mean suits against the road where he had signed bonds making himself personally liable—he and his friends.

Q. What reply did Mr. Case make to this?

A. He said that it was all right; that was what he wanted; it was the depot grounds and right of way he was talking about.

Q. Was any arrangement arrived at during this interview in regard to those rights of way and depot grounds?

265 A. Mr. Case said he was not authorized to act in the matter, so far as giving the bond that Mr. Kelly wanted. If Mr. Kelly would furnish him a list of these suits or appeals on which he was holden he would see what he could do.

Q. Was anything said during this interview about any sum to be paid for any rights of way or depot grounds?

A. They were to be given without expense to the road, provided he gave this bond.

Q. State whether you remember anything more regarding this conversation between the parties at this time.

A. Mr. Theodore Case asked for a list of all the lands lying along the line of the road.

Q. What reply was made to this request of Mr. Theodore Case?

A. As to the lands lying along the right of way of the road, he did not propose to give them away or sell to the road.

Q. Was this statement made in regard to rights of way and depot grounds or in regard to other lands owned by D. M. Kelly?

A. Other lands.

Q. Did Mr. Timothy Case make any response to this declaration by D. M. Kelly.

A. He said, as to the depot grounds and right of way connected with the depot grounds, that was what he wanted.

Q. What understanding was arrived at at this conversation, as you understood?

A. Mr. Kelly was to furnish them a list of all those suits or appeals on which he wanted a bond.

Q. Do you recollect anything else that was said at this interview by either of the three parties named by you?

A. I can't think of anything more at this moment.

Q. Was anything said about village lots or town sites at this interview by either of the three parties?

A. No.

Q. Did Mr. Timothy Case express any approbation or disapprobation of D. M. Kelly's proposition or statement?

A. He said he thought it would be fair.

Cross-examined by Mr. CASE:

Q. What is your present business?

A. I am office clerk for Mr. D. M. Kelly.

Q. Do you recollect the exact month in which this interview took place between the parties you are talking about?

A. I do not.

Q. Do you know in what way Mr. Case, the receiver, couched his language to Mr. Kelly relevant to his having right of way? Did not he say his right-of-way agent, Merrill, had furnished him with a list of right of way and depot grounds, showing it was in D. M. Kelly's name or in the name of his associates, Mr. Ketchum or Mr. Hiles?

Q. Do you mean the length of the road?

A. That portion I refer to standing in the name of Kelly, Ketchum, and Hiles jointly. Did he say that list had been furnished him by his right-of-way agent, Merrill?

A. I don't remember.

Q. Who was his right-of-way agent at that time?

A. I don't remember.

Q. Who had charge of that for the company previous to its going into the receiver's hands?

A. I think Mr. Merrill.

266 Q. At the time that this offer was made by Mr. Kelly to deliver up certain right of way and depot grounds, providing that he was indemnified by a sufficient bond to secure him against certain appeal bonds for which he was surety in suits pending against the company, did he offer at that time to surrender up any village lots or any moneys which had been derived from the sale of lots?

A. No, sir.

Q. No mention made of that by either party?

A. Not that I remember.

Q. At the time that Mr. Kelly spoke about these suits which were pending against him did he refer to one which was pending against him in New York for some $90,000?

A. Yes, sir.

Q. Did not the receiver or myself tell him we were wholly ignorant of that fact, and therefore we were not able to make any definite reply to his proposition until we should ascertain more about that suit?

A. It is possible; I do not remember.

Q. Don't you know we did?

A. I do not.

Q. Do you know that things were left open then?

A. Mr. Kelly asked you if you was prepared.

Q. Was it not because of that suit that we were not prepared; because of our not knowing anything about that suit?

(Objected to as being immaterial and improper; because the witness cannot tell what was operating upon the minds of Mr. Timothy or Mr. Theodore Case.)

Q. Was not that expressed in direct language?

A. I don't remember hearing it.

Q. Was not there reference made to that suit by myself or the receiver as the reason we could make no definite proposition?

A. I think not.

Q. Did not one of us say that we knew of no such suit against the company?

A. I have said before if you did I do not remember.

Q. Did we say we did know?

A. I do not remember.

Q. You don't know, then; you don't recollect?

A. I have no recollection about it.

Q. How is it you can recollect about other matters and do not recollect about this?

A. I do not remember about your saying you did not know anything about it.

Q. Do you recollect whether the amout of the suit was spoken of—the Garsia suit?

A. I don't know how many dollars were mentioned, but it was spoken of as a heavy suit.

Q. Did not Mr. Kelly say he was party defendant himself?

A. Nominally.

Q. He made use of that term?

A. Something that would mean the same thing.

Q. Did not myself or the receiver say it was a matter of surprise to us; we knew nothing about it?

A. I don't think you did.

Q. Then you have stated, as well as you can remember, everything that transpired at that interview?

A. Everything I can think of at this moment.

Q. Do you recollect whether Mr. Kelly stated what was the nature of this Garsia suit?

267 A. I don't think he did. He just made a statement there was such a suit. He wanted a bond to indemnify him against loss by it.

Q. Did we say that would be fair?

A. I would not say that; that I don't remember.

Henry Ketchum Recalled.

HENRY KETCHUM, recalled by defendant, testified:

Q. You have been sworn in this suit previously and have given testimony?

A. I have.

Q. Are you acquainted with W. J. Abrams, who has given rebutting testimony in this suit for the plaintiff?

A. I am.

Q. Were you present during his examination?

A. I was.

Q. In his testimony Mr. Abrams states that no contracts were taken for land in Seymour in the name of D. M. Kelly in 1871. State if you had anything to do with getting contracts for lands in Seymour in 1871; if so, who was with you. State of whom the contracts were obtained, in whose name they were taken, and by whom they were drawn.

A. I was through Seymour in the fall of 1871, in company with Abrams and Randall, for the purpose of looking up places to locate depots, &c. At Seymour there was a contract taken for a number of pieces of land. I don't remember the exact number now. My recollection is that the contracts were drawn by Abrams in his handwriting. There were some pieces that were furnished for the purpose of having depots located there and different things, and a number of parties furnished each of them a piece of ground, and the contracts were taken in Mr. Kelly's name, excepting one piece; my recollection is three acres to the company for depot grounds—at least, talked about. I am not positive — to day it was taken. The rest of them were all taken in Mr. Kelly's name.

Q. Was Mr. Abrams present at the time these various contracts were taken?

A. He was.

Q. State if you have any knowledge of these contracts referred to having been subsequently replaced by other contracts of the same import.

A. I saw copies of contracts or contracts for the same pieces of land that seemed to be drawn in the handwriting of Mr. Chynoweth, signed by the same parties.

Mr. CASE: Please repeat your answer.

A. I said I saw contracts for the same pieces of land that were drawn in Mr. Chynoweth's handwriting. The first were in Abrams' handwriting.

Q. Do you know the reason contracts were afterwards drawn by Mr. Chynoweth?

A. It was reported it was in consequence of their being informally drawn by Abrams; consequently they were drawn over by Mr. Chynoweth, and the parties signed them over because improperly drawn by Mr. Abrams.

Q. Were you through Seymour engaged in getting up contracts, in 1871, at any other time except when Mr. Abrams was with you and present at the negotiations?

A. No, sir; I was not.

Plaintiff's counsel objects to any testimony, which refers to these contracts which are not in evidence, which Mr. Ketchum has been testifying to, on the ground it is secondary evidence and the
268 contracts themselves are the best evidence, as long as they have failed to show that the contracts are lost or that they are unable to procure them.

Q. State what became of those contracts which were drawn by Mr. Abrams in 1871. What was the ultimate destination of the contracts?

A. I understood they afterwards gave deeds in conformity with the contracts.

Q. State whether or not at the time the railroad was constructed, and during the time you were connected with the road, there was land enough at the different stations for the necessary and convenient accomplishment of the company's business.

A. I think there was. I do not know of any place where there was any insufficiency in the quantity of grounds to do what business there was to be done.

Q. State whether or not in Merrillon, Whitehall, and Arcadia sufficient ground was occupied by the railroad company, at the time it was constructed and during all your continuance with the company, which was necessary for the convenient execution of the company's business.

(Last two questions objected to.)

A. I never knew of any complaint of inconvenience arising from an insufficiency of ground.

Q. Were you frequently along the line of the road for several years?

A. Very frequently during the whole term of my office.

Q. Were you in the habit of getting off and stopping at Merrillon, Arcadia, and Whitehall?

A. Very frequently.

Q. State whether or not you had facilities for seeing whether there was land sufficient for the company's business or not.

A. I had.

(All this testimony is objected to as irrelevant and not bearing upon the question whether there is room enough there at present or not.)

Q. State whether you are acquainted with John I. Blair. If so, when did you make his acquaintance, and where?

A. I made his acquaintance in the first place in 1870; I do not remember being personally acquainted with him before.

Q. State, if you remember, when J. I. Blair first went over the line of the Green Bay and Minnesota railroad.

PLAINTIFF'S COUNSEL: Is this your testimony in rebuttal or testimony-in-chief? Those two depositions are part of our original case. If this is testimony-in-chief for the defence I object to it.

Mr. FINCH: The depositions of Mr. Blair and Mr. Dodge were taken after the defendants had substantially closed their testimony. The testimony now being taken is to disprove the evidence, so far as we deem it important or material to disprove it, of Blair and Dodge.

A. I think it was in May, 1873—in May, 1873.

PLAINTIFF'S COUNSEL: I ask you to change the form of the question. The witness has not shown he had any knowledge.

Q. State if you accompanied Mr. Blair on this trip at this time.

A. I did.

Q. State where you met Mr. Blair at that time and where you went with him.

A. I met him at Green Bay. He looked over the company's property there and then went through to Merrillon on the train. The road was then built to Merrillon—about 150 miles; then we took teams from there and drove down the Trempealeau Valley to
269 Winona one day. The next night went down to Camp Douglas; stayed there overnight; then Blair went his way and I went another way.

Q. Were you connected with the company at this time; and, if so, in what capacity?

A. I was president of the company.

Q. State to what point the railroad was constructed at that time.

A. To Merrillon, Jackson county.

Q. You have stated, I believe, that you went with Mr. Blair, by team, from Merrillon to the Mississippi?

A. Yes, sir.

Q. Did you go through the town of Arcadia?

A. No, sir; I did not. We might have touched just the corner of the township. We did not go to where Arcadia was then or is now. I am not sure whether we touched a corner of the township. I think probably we did, but not where the town is now.

Q. Are you acquainted with the present location of Arcadia and the railroad depot at that point?

A. Yes, sir; I am.

Q. State how near the location of the railroad depot you went with Mr. Blair this time on his trip.

A. I don't know as I could state very definitely. It was in the evening when we got along there, and it is on the north side of the river mostly where we went through, and Arcadia is on the south side of the Trempealeau river, quite a distance from where the former road was and from where we went down.

Q. Were you, as president of the company, acquainted with the location of the road from time to time?

A. I was; continuously.

Q. Did you or not have much to do with the location of the line?

A. I did. I had a great deal to do with it.

Q. State if, at this time when Mr. Blair made this trip, the line was located through Arcadia.

A. It was not. There never had been a line run through the present village of Arcadia; not until a long time after that.

Q. State, if you know, what Mr. Blair's purpose was in visiting the line of the road at the time.

A. As I understood, for the purpose of looking over the route, &c. Mr. Kelly requested him to look over the line of the road, and we asked his opinion as to two or three different routes—one to run through Buffalo county to Wabasha; another one to run around the channel of the Trempealeau river, which makes a bend further up north, going six miles further north than necessary; another one was to run across the hill instead, making a tunnel through the mountain, saving several miles distance.

(Objected to by plaintiff as not rebutting testimony and irrelevant to anything contained in the depositions.)

Q. Are you acquainted with the location of the so-called Arcadia Mineral Springs?

A. I am.

Q. At the time Mr. Blair made his first trip over the road in 1873 had those springs been discovered?

A. Not to my knowledge.

Q. Do you know who owned the land on which those springs are now located at that time?

270 A. They were owned by the State of Wisconsin.

Q. As president of the railroad company, was the final location at Arcadia of the road made because of the existence of this mineral spring?

A. It was not. The mineral springs were not known by the company at that time.

Q. During this trip of Mr. Blair's in 1873 was anything said by him or by yourself or by any one in your hearing in regard to village lots or town sites along the line of the road; and, if so, what?

A. Mr. Blair, as he was riding down in company with myself and D. M. Kelly, was speaking of the country; that there ought to be some towns built up along there, and said that a few of us ought to buy up some town sites—that is, some ground for town sites—and there might be some money made out of it. This conversation was between Mr. Blair and Mr. Kelly; it was said by Blair.

Q. Was anything further said in regard to the same subject?

A. He said that in Minnesota, where he had been operating, a few of them had bought up some town sites and made a good deal of money; he thought there might be some made there.

Q. In your capacity as president of the railroad company were you ever aware of any town sites or village lots purchased by the company at the instance of its Eastern friends?

A. Not to my knowledge. That is all I ever heard said, that I recollect of.

Q. While you were president of the company did any Eastern stockholder or bondholder furnish any money for the purpose of buying up town sites and village lots?

A. Not to my knowledge.

Q. Were any lands purchased by the company for such purpose?

A. Not to my knowledge.

Q. While you were president of the company did any parties connected with the company purchase any lands for town sites or village lots that you knew belonged to the company or for the company?

A. No, sir.

Q. Do you know when the so-called Arcadia Mineral Springs were discovered?

A. My recollection was it was in 1878.

Q. Mr. Blair, in his answer to the filed interrogatories, states that he visited the line of the road in 1872; that while going over the line of road D. M. Kelly pointed out certain lands and village sites which he stated were owned by the company, and from which the company would realize large amounts by the sale of lands; that he does not recollect any particular point, except Arcadia; that D. M. Kelly told him that in Arcadia the company owned 40 acres, and that Arcadia was a somewhat prominent place, and those lands were considered of great value on account of the mineral springs located there. I understood you to state, in reply to questions, that Mr. Blair did not go over the road until 1873, and that the mineral springs were not discovered until 1878.

A. That is my understanding. He did not go over the road until 1873. There never had been a road run west of Merrillon before 1873, except by the way of Wabasha, and that was before Mr. Kelly and myself had any connection with the road. During our
271 administration there never was a line run west of Merrillon until 1873—in the spring of 1873—excepting the old line that had been run to Wabasha long before we had any connection with the road, and the springs were not discovered until 1878; that was the first I ever knew of its being a mineral spring. I never knew of its being a mineral spring or that they claimed any until 1878. Where the spring was in 1872 was owned by the State of Wisconsin. In 1873 I purchased it of the State myself, held it until 1878, and while I was holding the spring in 1878 Mr. Hiles made known to me he had had it analyzed and there was mineral qualities there; so I deeded the land to him, so he could improve it.

Q. State if you were in a position between 1873 and 1878 to have known about the existence of the semineral springs, if such fact had been known at all.

A. I should have known it because I was there frequently, and spent a good deal of time at Arcadia. I passed the spring frequently and drank of it a good many times, and never heard of any mineral qualities until 1878.

Q. I understand you to say that in 1873, when Mr. Blair went along the line of the road, the road was not located to Arcadia at all?

A. It was not.

Q. And that Mr. Blair did not go near the present site of the depot at Arcadia?

A. He did not.

Q. Who were in company with Mr. Blair in 1873 when he made this trip?

A. Mr. Hiles was along and Mr. Kelly.

Q. Any others that you remember?

A. I think not in the same team, except the driver. Randall was the engineer; he was in the company; we had two teams; we four was in this team, and my recollection is that Andrew and Blair's brother and the driver were in another team. I think we four were in this team—John I. Blair, Mr. Kelly, Mr. Hiles, myself, and a driver.

Cross-examination:

Q. You say that yourself, Hiles, and Kelly accompanied Blair all the way from Merrillon to Winona?

A. My recollection is that Mr. Kelly, when we got down to the little station this side of Winona, Bluff Side, that Mr. Kelly took the Northwestern road there and went South, and the rest of us went through to Winona.

Q. You say there had been three lines run at that time?

A. No, sir; I said we were talking about three lines.

Q. Had these lines been laid down on the map?

A. I presume the lines had been sketched across the hill and around temporarily for the sake of looking over.

Q. Randall, then, had made surveys?

A. He made surveys around the river.

Q. Made surveys from Merrillon to Winona?

A. He made the survey mostly through—Randall, I think, never made the survey through. Alton made the survey; closed it up; a survey made, then, around to Arcadia, on the north side of the river, running through Buffalo county mostly.

Q. Had there not been a survey on the side of the river Arcadia is at that time; did not Mr. Briggs say so; did not he testify so?

A. Not at that time; not as early as that. I don't think he did.

272 I think there had been a line run some distance from the town of Arcadia—a mile and a half from the present Arcadia. It was run across there to see whether it would be practical to go across the hill by making a short tunnel to save the long distance to go around the river.

Q. What time in 1873 was this?

A. The last of May, 1873—about the 28th of May.

Q. Do you recollect what time Mr. Briggs testified he had that interview with you in regard to telling him where the line of the road would come, if he would do as you requested him in regard to land?

A. I don't remember from his testimony. I don't remember exactly what his testimony was. My recollection is it was about August. I think it was in July or August. It might possibly have been in June; somewhere from June to August.

Q. How long after you had your interview with Mr. Briggs was it when he drove the stake in the ground, as he testified, locating the place where the depot should be?

A. I can't tell exactly. I don't know as I understand Briggs did drive a stake.

Q. I will change the question—was driven by him or caused to be driven by him?

A. I think it was caused to be driven in behalf of the company.

Q. You don't recollect the time when the stake was driven; how long after that interview?

A. There were different interviews.

Q. The first interview; I mean after your first interview; I mean the first interview in which you referred to this land?

A. This land matter came up—in the first place, the road was run on the north side of the river; run through the town of Glencoe.

Q. I know, you have testified about that. What I want to know is, How long after your first interview with Mr. Briggs in regard to this property at Arcadia was the stake driven which located the depot?

A. I can't tell just exactly. It was driven very soon after we concluded to change the line of the road. The road was first calculated to be located on the north side of the river.

Q. Then you drove the stake before you located your line?

A. No; very soon after we concluded to change the line. Glencoe refused; voted down the proposition to give us any aid, and we thought, as a matter of justice to Arcadia, that they were entitled to the benefits as long as Glencoe would not give anything; so we changed the line of the road.

Q. You have testified to that. You tell me you don't know how long it was?

A. I say I don't know exactly, because I don't know exactly what conversation you refer to.

Q. When was this stake driven?

A. My opinion would be some time about July.

Q. How long before that was the line located?

A. The location was made about the same time.

Q. Had not this survey been made at the time you first saw Mr. Briggs?

A. No, sir.

Q. At the time you first saw him about this land?

A. No, sir.

Q. You think the stake was driven in July, 1873?

A. Yes, sir.

Q. You think the survey was made about the same time?

A. The line was run prior to the fixing of the stake, but not a great while from the time that the line of the road from the
273 north side of the river was changed to the south side before this was arranged to locate the depot there; it was very soon afterwards. The line was run first, of course. We had to run the line before we could get a place for a depot.

Q. When was the road completed?

A. In 1873.

Q. What time in 1873?

A. December—that is, the connection was made with the La Crosse——

Q. You made your survey, you say, after May, 1873, and had the road in operation by December, 1873, from Merrillon to Winona?

A. I say there never was a line run on the present road until the spring of 1873.

Q. Had not that been run before Mr. Blair went over the road?

A. On the north side of the river, but not where the present Arcadia is on the south side.

Q. How far apart are the two lines?

A. I can't tell just how far apart they were. I should think, my own understanding would be, three-quarters of a mile, as near as I can remember.

Q. Did you hear the entire testimony of Dr. Briggs?

A. I think I did.

Q. Did he not say that the spring was known to have mineral qualities a number of years back, but not called a mineral spring until some time later?

A. He might have said so; I don't remember whether he did or not. I do not recollect of his stating it. I never heard anything of it until 1878, when Mr. Hiles first communicated it to me by having the water analyzed.

Redirect examination:

Q. Who bought this land on which the Arcadia spring was located, when, and how much was paid?

(Objected to as irrelevant and immaterial.)

A. I bought that in 1873; I can't state just the month. I bought it at Government price—ten shillings an acre. I bought it of the State of Wisconsin. I held it until in 1878, when Mr. Hiles communicated to me there was some mineral qualities to the spring and wanted it improved.

Q. You have stated that this spring was bought by you of the State, this land on which the spring was located, at ten shillings an acre in 1873. State whether it was before Mr. Blair made his first visit in 1873 or afterwards.

A. Afterwards.

Q. State who furnished the money.

A. I furnished it myself; took a deed in my own name, and afterwards charged a third of it to Mr. Kelly and a third to Hiles.

Q. Did the railroad company furnish any portion of the money these lands at Arcadia were bought with?

A. No, sir; not any.

Q. If these lands had been very valuable, as Mr. Blair testifies, at the time he went along the line of the road for the first time, in May, 1873, could not other parties have bought it of the State as well as yourself?

(Objected to, the opinion of the witness.)

A. Certainly.

(All this testimony objected to by plaintiff.)

George Hiles Recalled.

GEORGE HILES, recalled by defendant, testified:

Questions by Mr. KELLY:

274 Q. Timothy Case, in his rebutting testimony, in giving testimony in regard to the hotel at Arcadia, which is now erected and used at that place for hotel purposes, stated that he was not at Arcadia during the building of the hotel; that it went up like a mushroom in the night. State if or not Mr. Case was there at Arcadia during the building of that hotel; and, if so, how many times.

A. He was there twice, that I know of.

Q. Did he at either time make any objection to the construction of the hotel on its present site?

A. He did not. Mr. Case was there when the timber was on the ground, at about the time I was about to do some work on the depot. This was when the timber was on the ground, along in May, and then he was there when the hotel was almost completed or two-thirds completed; that I remember of distinctly—these two times.

Q. How long was that hotel in process of erection?

A. About seven weeks.

Q. Mr. Case also said he did not carry or cause to be carried the lumber free of expense which was used in the construction of the present hotel. State if that was so or the contrary.

A. Mr. Case was to carry 20 car-loads and take stock in the Mineral Springs Company. That was the understanding between Mr. Case and me.

Q. Then I understand you to testify that Mr. Case, as manager of the road, did carry the lumber used in the construction of the hotel free of expense?

A. He was to take stock in the Mineral Springs Company, and I sent him the stock and he returned it.

Q. Then, as a matter of fact, he did carry it free of expense?

A. That is all we paid—the stock—and he returned that. In another trade that I made with Mr. Case I took the stock back.

Q. When did Mr. Case, as general manager or receiver of the railroad, first object to the hotel on its present site?

A. He never objected to it. It was all right and he was perfectly satisfied with its being there, and I made an arrangement with Case to extend the platform to the depot. He was to furnish all the help and I was to put the lumber in. I put in about eighteen or twenty thousand feet; also he agreed to do some filling. He never objected to its being there; it was all right.

Q. Are you acquainted with John I. Blair, one of the witnesses in this case?

A. I have seen him; yes, sir.

Q. When did you first become acquainted with Mr. Blair?

A. I first became acquainted with him in May, 1873.

Q. And where?

A. At Merrillon.

Q. At that time what was your connection, if any, with the Green Bay & Minnesota railroad?

A. I was acting as paymaster for the firm of Hiles & Dayton. I virtually stood behind them to construct the road from Merrillon to Winona; Hiles & Dayton; my son and Mr. Dayton.

Q. Had you been a contractor on the road previous to that time?

A. I had.

Q. And were then interested in contracts in building the road?

A. Yes, sir.

275 Q. How far was the Green Bay & Minnesota railroad constructed at that time—May, 1873?

A. To Merrillon.

Q. Where did you meet Mr. Blair at this time, and how far did you go with him over the line of the road?

A. I met him at Merrillon, and went through to Winona.

Q. By what conveyance?

A. In a buggy—light two-seated wagon or three-seated; I am not sure which.

Q. From which point did you go?

A. From Merrillon through to Winona.

Q. Do you know how far the road at that time was located beyond Merrillon?

A. It was located to Blair.

Q. How far?

A. Blair is about—something over 20 miles; it was located positively to Blair; that is as far as it was located at that time.

Q. At that time had the line of road been run through to Arcadia?

A. It had not; no line.

Q. Did Mr. Blair on this trip go near the present location of Arcadia?

A. He went on the north side of the river from there; he did not stop at Arcadia at all.

Q. Mr. Blair testifies that on this trip he was pointed out certain village lots and cites which had been donated to the company; that particularly he recollects Arcadia, and that D. M. Kelly informed him that 40 acres had been donated there to the company, and that 40 acres was valuable, because there were mineral springs upon it, and that it would be well for the company to secure other lands in Arcadia, for the reason it would be likely to be an important place. State if the mineral springs, now known as such, at Arcadia were then discovered.

A. They were not.

Q. Who owned at that time the forty — on which the mineral springs are located?

A. The State of Wisconsin.

(Objected to on the ground that it is secondary evidence.)

Q. When were the mineral springs discovered?

A. I first discovered them in the fall or summer of 1877. In the spring of 1878 I had Professor Allen analyze the water; that was

the first that was said about its being mineral water, but I was satisfied in 1877 that it was mineral water, but there was no talk about it before 1877.

Q. Until you had this analysis did the springs have the reputation of being mineral springs?

A. No, sir; they did not.

WITNESS: Let me make one statement. At the time I went through with Mr. Blair the road was located to Blair. The company, Mr. Ketchum in particular, was very desirous of the roads taking the short cut from Blair to Arcadia; it would take it over a rough piece of country where there would be tunnelling of twenty-one hundred feet. I was of the opinion that the road could not be built through there without a very large outlay of money, and it would be cheaper and better to build it around, down the Trempealeau river. I talked with Mr. Blair about it myself, and showed him all the points and told him all the particulars of both routes, and did all I could to enlist Blair to decide with me, which he did do after going around.

(Objected to as being wholly immaterial.)

276 Witness continues: After that the surveyor was ordered to survey the route around the Trempealeau river by Arcadia.

Q. Supposing the plan you speak of as having been favored by you had not been adopted, would the line have been placed where it now is at Arcadia?

A. I don't understand.

Q. Would the present location of the station at Arcadia have been the point described by the railroad line?

A. No, sir; if the original plan of going the cross-cut from Blair to Arcadia had been adopted, and the road been built that way, the depot would have been a mile from where it is now.

(Objected to.)

Q. How long after Mr. Blair went over the road in May, 1873, was the line definitely located to Arcadia, at the point where the depot in that town is now located?

A. You (Mr. Kelly) and Mr. Blair went off somewhere, and Mr. Ketchum and me went back in the buggy; he gave orders for the company's surveyors to commence surveying around the river.

Q. How long at that time had you been interested as contractor with the Green Bay & Minnesota Railroad Company?

A. I commenced in April, 1872.

Q. Where was the road constructed to at that time?

A. When I commenced?

Q. Yes, sir.

A. It was constructed to New London; a little this side.

Q. After you became connected with the road, when it was constructed to New London, forty miles west from Green Bay, did Mr. Blair, to your knowledge, ever make a trip over the line until May, 1873?

A. No, sir; I was on the line all the time, and I am positive he did not make a trip over the line until May, 1873.

Cross-examination:

Q. Did you erect another hotel at Arcadia besides the one you have just testified about?

A. I did.

Q. Where was that hotel?

A. Over by the mineral springs.

Q. Directly adjacent to the springs?

A. Right close by—within twelve or fifteen rods.

Q. Where did your lumber come from you built that hotel with—the hotel by the springs?

A. From Scranton, Dexterville, and Merrillon.

Q. How did it get to Arcadia?

A. It was freighted by the Green Bay Company.

Q. What did you pay for the freight?

A. They freighted it for nothing.

Q. Is not that the lumber that Mr. Case testified that he freighted for nothing that was used in the building of that hotel by the springs?

A. Mr. Case testified that he freighted it for nothing.

Q. Is not that the lumber?

A. I presume so; he freighted it for nothing.

Q. Is not the lumber you erected the second hotel from the surplus of that?

A. No, sir; he freighted twenty car-loads; he was to take mineral spring stock; I made the stock out and sent it to him, and he returned it.

277 Q. For the freight of that hotel that was burned? I understood you so.

A. No.

Q. Did he ever agree to take any stock?

A. Oh, yes, sir; he agreed to take stock for 20 car-loads.

Q. Do you know that the reason he brought that free for that hotel by the spring was that he thought it would get passengers to come in there and patronize the road? Don't you know, as a matter of fact, that the reason he carried that free, for nothing, was because he thought by the erection of the hotel there it would draw people to patronize the springs?

A. I believe that to be a fact.

A. Did he not say that?

A. He possibly might; I don't think he did. I believe that to be a fact, and I believe Mr. Case thought so.

Q. And he therefore returned you the stock?

A. Mr. Case returned me the stock, and I saw him afterwards, after returning the stock, and he said that the stock did not belong to him, but belonged to the R. R. company, and I had made it out to him.

Q. Did he ask you for it again?

A. I don't remember as he did.

Q. Did you not suppose he was somewhat derelict in his duty if he thought that stock belonged to the company, and yet did not get it?

(Objected to; question waived.)

Q. Mr. Case testified here that it was not his intention to deliver any lumber at all to you for the second hotel which you erected; that he did intend to carry the lumber free for the first hotel, and in carrying out his intention so told you. Is not that a fact?

A. I have testified here that Mr. Case was to receive stock for carrying 20 car-loads of lumber for the second hotel. When the hotel was built I made out the stock, sent it to him, and Mr. Case returned it.

Q. What compensation, then, was the road to receive for carrying lumber for the first hotel free of charge?

A. I have stated before that I do not know, but my opinion is that Mr. Case thought there would be more passengers on the road; it would benefit the road.

Q. When was this last hotel built?

A. Commenced in May; finished in July.

Q. Do not you know, as a matter of fact, you sent stock to him before you commenced building the second hotel, immediately subsequent to your building the first hotel?

A. No, sir; I know it is not so.

Q. You say he was at Arcadia twice when you were erecting that last hotel?

A. He was there in May; I can't exactly remember the date, but some time in May.

Q. About what time?

A. Some time in May; I can't remember the date.

Q. Fore part of May?

A. I think near the middle. It might have been before the middle or after.

Q. Cannot you give us the time within a week?

A. I know it was in May; I have no means of telling the exact date.

Q. Did Mr. Blair ever go over the road again after 1873 with you before the building of the road to Winona?

A. With a team?

278 Q. Yes, sir.

A. No, sir.

Q. Then he did not go over any time except the time you have testified?

A. Not with a team.

David M. Kelly Recalled.

DAVID M. KELLY recalled.

Examined by Mr. FINCH:

WITNESS: I have been sworn before in this case.

Q. Were you present at the examination of Mr. Abrams?

A. I was.

Q. Have you read his testimony since he was examined?

A. I have.

Q. What do you say in relation to when, were, and how the line of the railroad was located?

A. When I first became connected with the company the road was located definitely to New London, 40 miles. Afterwards and while I was contractor the road was definitely located to Winona, on the Mississippi. It was located beyond New London by the advice and desire of the Eastern parties who had bought bonds and stock of the road and by the direction of the board of directors of the company.

Q. It was not your own personal act, then?

A. It was not. I advised as to the location of the road, but the actual division (?) was made by the Eastern gentlemen interested and by the board of directors.

Q. As to the land bought of Mrs. Davy at Manawa and the title in your name, what about it?

A. Mr. Ketchum, while president of the company, obtained a deed for right of way and a small piece of land in connection therewith of Mrs. Davy. The money, as has been testified, was furnished by the railroad company. Mr. Ketchum took the deed in my name, for what reason I do not know, and the land stands to-day, I presume, in my name, unless some other conveyance has been made by Mrs. Davy. I have not exercised any right of ownership over any of that property. The right of way and the land connected therewith and all the land covered by that deed has been used since by the railroad company freely and uninterruptedly; and had my attention been called at any time to the matter I should most certainly have given a deed free of expense to the railroad for all that land. I do not claim any interest in that land and never have, and was not aware until the evidence was taken in this case that the deed was in my name.

Q. Were you called upon before the commencement of this suit in relation to this particular land by anybody?

A. As I have testified, Mr. Case in a general way asked me for what I would give a deed of the right of way and depot grounds standing in my name. No reference was made to this particular piece. There was no special request to convey this piece, and until a few weeks ago I was not aware the title stood in my name; I never have claimed any interest in the land; I do not now, or exercise any rights of ownership.

Q. As to the Seymour contracts and deeds mentioned in this testimony, what of them?

A. The Seymour contracts were taken in 1871 in my name; they were in the handwriting of W. J. Abrams. Mr. Ketchum and Mr. Randall assisted in getting those contracts. The contracts proved to be invalid on account of inaccuracy, and were retaken by
279 Norris and Chynoweth, attorneys at Green Bay, and were retaken in my name. The old contracts which were taken by Abrams in 1871 in my name were returned to the parties, and

new contracts taken by Norris and Chynoweth, and the new contracts were returned, when deeds were given, several years later, which deeds also run to me.

Q. When did you make the plats of Seymour, Manawa, Merrillon, and Whitehall?

A. Merrillon, Seymour, and Whitehall plats were made in 1874, 1875, and 1876. The Whitehall plat was made by Mr. Ketchum in 1874, I think. They were recorded immediately and have stood on the record ever since, and the lots belonging to the plats have been sold and deeds given in the names of the parties who platted the lands and whose names appear on the recorded plats.

Q. Mr. Abrams has stated in his testimony something about a resolution adopted confirming your contract of February 12th, 1872. State the circumstances in relation to the preparation and adoption of that resolution. Who prepared it?

A. The railroad company, of course, had attorneys who looked after its interests. I had no attorney, but, being a lawyer myself, it was my habit to do my own legal business. That resolution I prepared myself, because the contract for February 12th was a very important one and I desired my interests fully protected. I desired such a resolution should be passed by the board of directors as would be legal and would protect my interest fully; therefore I drafted a resolution, submitted it to the attorneys of the company, and then handed it to W. J. Abrams, one of the directors, to be presented at the meeting of the board of directors. And I would like to add that in preparing that resolution and preparing a few other resolutions which I did prepare, which were passed by the board of directors, in relation to my three contracts which I had at different times respectively, I simply acted as my own attorney, desirous of having my interests protected and everything in connection with those contracts between myself and the company legal and straight. I prepared them myself instead of hiring an attorney.

Q. You have had considerable experience in connection with the road since it was built, have you not?

A. I was general manager—elected general manager and director in April, 1874, after the road was constructed, and remained such until December, 1877.

Q. What do you say, as being acquainted with the operation of the road and its business; was the fact in relation to the quantity of land necessary for the service of the company in December, 1877?

A. I would state in answer, generally, that when the road was constructed there was ample grounds provided and set aside for the company's use at every station, and that such land was sufficient for all the necessary and convenient use of the company up to the time I resigned, in the fall of 1877.

Q. Your opinion is derived from your own knowledge of the business of the road at that time and your connection with it?

A. I was general manager for several years, and was back and forth on the road and knew the details of the business, and the land used by the railroad company at Seymour, Manawa, Merrillon,

Whitehall, and Arcadia, and the other stations were ample for all the needs of the railroad company and its business.

280 Q. Were you present at the time Mr. Timothy Case was examined?

A. I was, and heard all his testimony.

Q. Will you state what there is about that charge of his that you wrote him a threatening letter?

A. I never wrote Mr. Case a threatening letter. If he has such in his possession I should be glad to have him produce it, and we have served a notice on him to produce one or two letters he has not produced.

Q. Have you any personal knowledge or recollection of any letter from yourself to Mr. Case threatening in its character?

A. I have no recollection of any such letter, except that I once wrote him a letter, and it was in the spring of 1878, in which I stated that I had heard that he was reporting stories in regard to myself and my former connection with the company which were not true; that while he was entirely at liberty to state everything that was true in connection with my relations to the company, yet he must be careful not to state anything that was not true, as he might be called upon to account for doing so. These were nearly the exact words and were the only words in that direction I wrote to Mr. Case. The letter contained that language. We have requested Mr. Case to produce it, served a notice on his attorneys to produce, but they have not yet produced the same.

Q. Generally, what has been Mr. Case's action toward you since he has been appointed receiver?

(Objected to as immaterial and irrelevant.)

A. When Mr. Case first came to Green Bay he said to me that he came charged with treating me with every courtesy and consulting me in every particular, and I received him cordially, as I think, and told him that I should be glad to assist him in any particular that he desired, and very soon after that I became aware that Mr. Case was circulating reports and stories in regard to myself and my connection with the road that were utterly untrue. I ceased then to make any advances or overtures toward him, except when he approached me. He never asked me for any advice or directions I did not give to him freely and readily.

Q. Since you ceased to make any advances toward him what has been his general line of conduct towards you?

A. I think and believe that Mr. Case has endeavored to malign and injure me socially and politically as much as he possibly could do.

(Objected to, the whole line of the testimony.)

WITNESS: So far as I am concerned I have made no attempts to injure Mr. Case, but have simply acted on the defensive. I would like to say that Mr. Case said in his testimony that one of my letters to him (which he called a threatening letter) expressly, or by intimation or implication, stated that he must not state that I had in

my possession property that really belonged to the railroad company, and that he must not say that I was dishonest; if he did I should injure him or call upon him to suffer consequences. I never used any such language, anything like it, or anything that could be construed to mean that in my letters to Mr. Case, or any verbal language I ever used to him.

Q. Do you know W. R. Hancock?

A. I do; he was treasurer of the railroad company several years while I was general manager, and, in fact, I obtained a position for him on the Green Bay road.

Q. Explain why you gave to him, as treasurer, the payments made to you on lots sold by you at Seymour, which he testifies about.

281 A. I was loaning money to the railroad from time to time, I was accepting railroad company's paper and endorsed railroad company's notes, and it was a running account between us for years, and the railroad company also owned certain lands. I owned certain lands, and when I came to figure up my account at the time I resigned as general manager and vice-president I found that I had given Mr. Hancock two payments which I had received from lots in Seymour which I had sold from the plat that I had recorded in my name, and which plat was made from the lands which had been deeded to me by Seymour parties. I cannot just now state what influenced my mind at the time I made those two payments to Mr. Hancock, but they were made by mistake, and when we came to balance up my account the payment was placed on the other side and I received the money back. I cannot now recollect the time I paid that money to Mr. Hancock, but I recollect it and had it credited to me. He had charged me on one side with the receipt of the money and credited me with payment to him. When I figured up my account Mr. Hancock charged to him, which left the credit to me and made the total amount due me from the company—which was quite a sum—larger by the amount of these two payments. I think those two payments amounted to about $50; between $50 and $60. That is all there is about the Seymour matter. The money was paid to the railroad company by mistake, and when the mistake was discovered was returned to me.

Q. Coming now to the deposition of John I. Blair, have you read what purports to be a copy of that deposition?

A. I have.

Q. Will you state when you made first the acquaintance of Mr. Blair, and where?

A. I first met Mr. Blair in the summer or fall of 1871, in New York city.

Q. Who was present at the time that you were first introduced to him?

A. I cannot answer that question. It is possible that I was introduced to him when he was alone and there might have been some one by.

Q. When did Mr. Blair, to your knowledge, first go over the line

of the road and for what purpose, and was anything said on that trip or at any other time about lands at Arcadia?

A. Mr. Blair has testified he went over the road in 1872. Such is not the fact. Mr. Blair never was on the line of the Green Bay & Minnesota railroad until May 27th and 28th of 1873. Up to that date no Eastern bondholder or stockholder had ever been over the road, although I had often invited them to go out over the road making examinations; but, in May, 1873, Mr. Blair came to Green Bay and we left for Merrillon—to which point the railroad was then constructed—on the 27th of that month. We went to Merrillon by train and then took a team and drove down the Mississippi. The road at that time was located to the Norwegian church, which was about twenty miles west of Merrillon. Mr. Blair came out for the purpose of determining in what direction the road should run from Merrillon to the Mississippi river. We had then three lines, or rather three directions, in view for the road to run—one to Wabasha, on the Mississippi, and one down the Trempealeau river to Winona, and the third to La Crosse. This Norwegian church, to which we had located the line when Mr. Blair went over the road in
282 May, 1873, was a common point from which either Wabasha or Winona or La Crosse might be reached, andt o whichever of these three points the line was to run it would be necessary to go to the Norwegian church. I had been in New York during the previous winter and up to about the first of May, 1873, in conference with Mr. Blair, Mr. Dodge, Mr. Taylor and others, and had been urging upon them first to construct the road to the Mississippi; and, second, that the road down the Trempealeau Valley was the better route to Winona, but gave them the points in favor of La Crosse, or in favor of Wabasha. Mr. Blair came out at the request of the other Eastern gentlemen and on his own account to determine, first, if it would be well to extend the road to the Mississippi, and, if so, whether to Wabasha, Winona, or La Crosse. As I stated before, we had located the line to the Norwegian church and stopped there waiting for Mr. Blair. Mr. Blair talked the matter fully with Mr. Ketchum, Hiles, and myself, and also with the engineer, and he became convinced that the line down to Winona was the best line; therefore when we left Merrillon by team we went down on that line to Winona. At that time no preliminary survey had been made through Arcadia. We did not go within a mile from just where our line would pass through that section of Trempealeau county, and when Mr. Blair went through with a team we did not come within a mile of where the depot is now located, and we went through that section in the evening, when it was impossible to see much. At that time no station had been located at Arcadia, and, in fact, we thought we should go on the east side of the river, about a mile from where we are now; and no mineral springs had been discovered then at Arcadia, and the land upon which they were afterwards discovered was then owned by the State. When Mr. Blair states that in passing down over the line this time I pointed out to him land at Arcadia which had been donated to the company, and which land was represented to be valuable on account of these mineral springs, and

that I represented to him that on account of these springs, and on account of the importance of Arcadia in the future, we should secure more land beyond this forty acres, his testimony is not correct, because we did not go near the present station of Arcadia. We did not then know where it would be, and, as I said before, no mineral springs had been discovered. The land on which the mineral springs are located was then owned by the State.

Q. Was his statements in these particulars entirely mistaken?

A. He is intentionally or unintentionally mistaken in that, and most of his other testimony.

Q. What have you to say as to the statements made by Mr. Blair in his deposition, that the sale of village lots would prove a large source of income to the railroad company?

A. I never had any such conversation with Mr. Blair or anybody else connected with the company, and at the time Mr. Blair was through there no village sites or lots were owned by the company; the company had not bought any or furnished any money to buy any; the company was not intending to buy any, and I never had any conversation with Mr. Blair in regard to village lots or town sites, except the conversation which I have previously testified to.

Q. Do you know of Mr. Blair ever having personally put any of his money into this company by reason or on account of any representation you ever made to him?

283 A. Mr. Blair has never, I believe, put a dollar of money by reason of any representations which were made by me to him. I believe and know that Mr. Blair's interest in the Green Bay & Minnesota railroad was obtained through his connection as a stockholder and director in the Lackawanna Iron & Coal Company, and that he obtained his interest in the Green Bay & Minnesota railroad in that way and through that channel. The Lackawanna Iron & Coal Company sold me, at different times, a large amount of iron, for which they received stock and railroad bonds, and, as I understood it, Mr. Blair has received his securities by reason of his connection with that company, but Mr. Blair, to my knowledge, never put a dollar of his own money directly into this road.

Q. Did you ever furnish Mr. Blair or the Lackawanna Iron & Coal Company with a copy of your contract to build the road?

A. I did. I furnished it to the Lackawanna Iron and Coal Company.

Q. Do you recollect about when?

A. When I first had a negotiation with these gentlemen, in the fall of 1871, I informed them I was a contractor with the company and had a contract. My recollection is I showed them the contract at that time. I certainly informed them I was a contractor, and if I did not show them the contract I gave them—I mean the directors or some of them of the Lackawanna Iron and Coal Co.—a general statement of what the version of *what* that contract was. I did at one time, and prior to Mr. Blair's trip over the line of the road, furnish that company with a copy of my contract.

Q. What statements, if any, did you ever make to Mr. Blair that you had received from individuals donations of land which were to be for the benefit of the railroad company?

A. I said to Mr. Blair that a good deal of right of way had been given to the company; that some had been deeded at a low rate. I also told him that different towns and counties had contributed bonds to aid the road, for which they received stock. I also informed him that L. G. Merrill had subscribed $50,000 capital stock to the company. With those exceptions, I never informed Mr. Blair that any corporation or individual had donated anything to the company, and I never told him that any corporation or individual had donated any village lots or town sites to the railroad company.

Q. Was it an agreement or understanding with the railroad company, the Lackawanna Iron and Coal Co., or John I. Blair that you were to have no outside interest in lands?

A. No, sir; there was no such understanding either with the railroad company, the Lackawanna Iron and Coal Co., or John I. Blair or William E. Dodge. On the contrary, I gave them to understand that I was interested in outside lands and outside enterprises which were calculated, directly or indirectly, to make business for the railroad company. They never took any exception to it.

Q. What was your rule in reference to applying to the Lackawanna Iron and Coal Co. or any of the Eastern friends of the railroad for funds as to the use to be made of them?

A. I was in the habit of furnishing them a statement in full how much money I wanted, and what for. That was my uniform system and there was no deviation from it. I would like to add, I never informed them at any time that money was desired to buy town sites or village lots; never obtained any money from the company to be used in any such way.

284 Q. When did you begin to make reports to the Eastern parties?

A. I think it was in 1875.

Q. What, in a general way, was the character of these reports?

A. I gave them a weekly statement of earnings, and each month I gave them a statement of the earnings and disbursements during the month of the amount expended during each month for construction purposes and also for purposes of operation. I also gave them a balance-sheet brought up to the first of each month, and once a year I gave them a general balance-sheet of the whole business.

Q. When did you cease to make these reports to them?

A. The last reports were forwarded by me in December, 1877, for the previous month of November, and I left the service of the company the latter part of December.

Q. You continued, then, to make the reports up to the time you left?

A. I made the reports up to the time I left; and I would further say that I made such reports as were desired of me and as had been requested of me by the officers of the Lackawanna Iron and Coal

Co., and that my instructions to the treasurer who actually made out these reports and statements were exactly what I received from the first, and that the officers of the Lackawanna Iron and Coal Co., the parties interested in the road at the East, while receiving the reports for years, never objected to their sufficiency, frequency, or correctness.

Q. About how many years prior to the filing of this bill was it? that the title to these lands had been taken in your name, of record.

A. The deeds or contracts for deeds had all been taken prior to January, 1874. I became a director, general manager, and vice-president in April, 1874. All these lands had been taken by deed or contract previous to that time. Those deeds and contracts were all a matter of record, and my title was never called in question until this suit was brought in 1879.

Q. Coming now to the deposition of William E. Dodge, have you read that deposition?

A. I have.

Q. When did you first meet William E. Dodge, and where?

A. I first met him in the winter or spring of 1872. I will state that I met Mr. Blair in the fall of 1871. Mr. Dodge was at that time abroad, and I did not make his acquaintance until the winter or spring of 1872, in New York city.

Q. Did Mr. Dodge or his friends ever, to your knowledge, invest in this railroad by reason or on account of any representations you made to him?

A. I do not know that Mr. Dodge or his friends ever invested a dollar in this railroad by reason of my representations. Mr. Dodge obtained his interest, as Mr. Blair did, through his connection with the Lackawanna Iron and Coal Co., which company had obtained from me stock and bonds of the railroad company in exchange for rails that I had bought of him; and I also state that I borrowed money of the Lackawanna Iron and Coal Co., as well as purchased rails of them, which money was obtained for the use of the company and used for the company's benefit.

Q. What do you say as to his statement there in his deposition in relation to your representations that the company owned village lots and would realize money because of the sales of village lots?

A. I never made any such representation to Mr. Dodge in any way, shape, or manner; I never stated to him or intimated
285 to him or desired him to believe that the railroad company owned any town sites or village lots.

Q. Are you positive on that subject?

A. I am perfectly positive on that subject.

Q. Would it have been true if you had made any such representations—true in point of fact?

A. It would not in point of fact, because the railroad never owned any town sites or village lots and never furnished any money for obtaining any such property.

Q. Did you ever have any conversation with William E. Dodge regarding valuable donations made to the company by counties, towns, and individuals; and, if so, what was that conversation?

A. I met Mr. Dodge at Winona or at our station, Marshfield, opposite Winona, I am not sure which, in 1875 or 1876, and took him over the road in the company's office-car to Green Bay. Mr. Dodge was accompanied by his wife. Mr. Ketchum went with us part of the way. We talked generally, in going over the road from the Mississippi river to Green Bay, about the building of the road and the present condition of the road and prospects for the road, and as we went through the several towns I told Mr. Dodge how much local aid in the way of bonds had been contributed by the various municipal corporations in exchange for the stock of the company, and when we were at Merrillon I told him that L. G. Merrill had subscribed $50,000 to our capital stock.

Q. Was he the proprietor of that town?

A. He was the proprietor of that town at the time we constructed our line through there and subscribed $50,000 to our stock. Aside from this statement in regard to L. G. Merrill, I did not inform Mr. Dodge that any individual had made any donation to the company, and I never said to Mr. Dodge that any municipal corporation or individual had donated town sites or village lots to the company. I could not have made any such statement, because it was not true. There were at that time two or three town sites and a good many village lots standing in my name, bought with my money.

Q. Did you or any officer of the company, to your knowledge, ever use any of the railroad company's money in purchasing any lands which are now standing in your name?

A. I never used any of the railroad company's money in purchasing any lands which now stand in my name. I do not know that any officer of the company ever used any of the company's money to purchase lands standing in my name, except in this case of Mrs. Davy, where Mr. Ketchum, the president, paid Mrs. Davy $80 of what I believe to have been company money, and took a deed for some right of way and a small piece of ground in my name. I have already explained that.

Q. Did the company ever furnish the money to buy any of the lands that are in suit here in this bill, to your knowledge?

A. No, sir; except in the instance which I have named of Mrs. Davy.

Q. You said, in answer to my question in relation to the deposition of Mr. Blair, when the Arcadia Mineral Springs first became known. As there is something said in Mr. Dodge's deposition, will you please repeat it?

A. I resigned as general manager in November, 1877, and ceased my connection with the company as such in December of the same year; up to that time there was no such thing known as the Arcadia Mineral Springs or Mineral Springs of Arcadia.

286 Q. Who bought the land on which the Arcadia Mineral Springs are located?

A. Henry Ketchum bought the land and paid his own money for it. It was the understanding at that time, however, that I was to have an interest by paying my share. There was several forties in the vicinity of Arcadia which were not necessary for railroad pur-

poses, but which I thought might become of some value by reason of the location of the town there, and Mr. Ketchum bought some of those forties; perhaps all of them; took the title in his own name, paid for them with his own money, but I was to have a certain interest by paying my share of the cost. I afterwards transferred my interest to Mr. Hiles for a valuable consideration.

Q. Has the company ever complied with the offer which you made to the receiver—you would convey what was properly depot grounds, right of way, station grounds, etc.?

A. As I have before stated, I always expected to give to the railroad company ample depot grounds and the right of way connected with the lands I owned along the line of the road, and I made a proposition to Mr. Case, as I have previously testified, that I was ready to deed, free of cost, such depot grounds and right of way when I was furnished with a bond to protect me in certain suits appealed by the railroad company, to prosecute which suits I had become bondsman.

Cross-examination:

Q. In making an offer to the receiver to convey to him certain right of way and depot grounds which stood in your name, subject to certain conditions which he was to perform, there was no conversation whatever about village lots?

A. No conversation at that time about any town sites or village lots.

Q. What was said?

A. Nothing was said at all, except Theodore Case, the son of the receiver, asked me to give a list of all the lands which I owned upon or near the line of the Green Bay & Minnesota railroad. I replied that I owned lands along the line and near the line which I did not propose to either give or sell to the railroad company, but that I was willing to give a quitclaim deed free of all depot ground and right of way that stood in my name to be used by the company, and Mr. Timothy Case replied that that was all that was wanted; they did not care about anything except the depot ground and right of way.

For depositions of John I. Blair and William E. Dodge, part of complainant's testimony-in-chief taken on commission, see pages 303 to 313.

287 PLAINTIFF'S EXHIBIT No. 1.

STATE OF WISCONSIN, } ss:
County of Trempealeau, }

U. S. Circuit Court, Eastern District of Wisconsin. In Chancery.

TIMOTHY CASE, Receiver G. B. & M. R. R.,

vs.

DAVID M. KELLY, GEORGE HILES, HENRY KETCHUM, and THE ARCADIA MINERAL SPRING COMPANY.

Ebenezer Thurston, being duly sworn, upon his oath says that he is and has been a resident of the town of Preston, in said county of

Trempealeau, in said State of Wisconsin, for the past twenty-three years; that he has owned property in said town and is still the owner of property in said town; that during the year he conveyed to Messrs. Kelly, Ketchum, & Hiles, as officers of the Green Bay and Minnesota R. R. Co., the N. W. ¼ of the S. E. ¼, section 16, township 21, range 7 W., the same being forty acres. The consideration of said conveyance was that a depot should be erected by the Green Bay and Minnesota R. R. Company upon said land, and also a life pass furnished him for himself and wife over the entire line of the railroad of the said railroad company; that said depot was built by the said parties or company, and passes were given him, one for the year in which the conveyance was made and the other for a portion of the following year; that he intended and desired and presumed that said property was conveyed to the said parties in trust for said company; that said parties represented to him that they were the company and the money was being used to build the road; that he is informed and believes that said property has been laid out in town lots by the said parties, and is known as the village of Blair, and that a number of lots have been sold by said parties to different purchasers in their own name, and that said lots are now being offered and negotiated for sale; that he is informed that said parties have conveyed those portions of said lands which has not been sold by them to George Hiles, and that he is now offering them for sale; and deponent further deposes and swears that it was his intention and desire to convey said property to said railroad company through the agents, Ketchum, Kelly, & Hiles, and he presumed and believed, when he made his deed of conveyance of said property, that the said Ketchum, Kelly, & Hiles were taking said property as officers of said railroad company and in trust for the said company; that he is the Ebenezer Thurston mentioned in the petition of Timothy Case, as receiver of the G. B. & M. R. R. Co., against the said D. M. Kelly, Henry Ketchum, George Hiles, and the Arcadia Mineral Spring Company.

his
EBENEZER x THURSTON.
mark.

Subscribed and sworn to before me this 17th day of July, 1879.
W. B. COMAN,
Notary Public of Trempealeau Co.

288 PLAINTIFF'S EXHIBIT 1[1]. Fr. Bloodgood, Exam'n'r, &c.

This indenture, made the 20th day of July, in the year of our Lord one thousand eight hundred and seventy-seven, between Leander G. Merrill & Nancy, his wife, and Benjamin H. Merrill, & Catherine, his wife, all of Jackson county, Wisconsin, parties of the first part, and David M. Kelly, of Brown county, in said State, party of the second part, witnesseth:

That the said parties of the first part, for and in consideration of the sum of one dollars to them in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowl-

edged, have given, granted, bargained, sold, remised, released, aliened, conveyed, and confirmed, and by these presents do give, grant, bargain, sell, remise, release, alien, convey, and confirm, unto the said party of the second part, his heirs and assigns, forever all those certain tracts, pieces, or parcels of land situate, lying, and being in the county of Jackson, State of Wisconsin, and particularly described as follows, to wit:

The southwest quarter of the southwest quarter of section No. twenty-three (23), in township No. twenty-three (23) north, of range No. four (4) west; also two other pieces or parcels of land, each one hundred & fifty feet wide and lying one of them on each side
289 of the right-of-way one hundred-foot-strip of the Green Bay & Minnesota Railroad Company, each commencing at the west line of the aforesaid forty-acre tract, and running thence westward and parallel with said railroad sixteen hundred feet (1,600), and making, with said right-of-way strip, a tract of land four hundred feet by sixteen hundred feet, excepting and reserving, however, from the several hereinbefore-described tracts eleven (11) certain portions thereof, delineated and marked with the names of the respective grantees thereof upon the map hereinafter contained, heretofore conveyed to A. Sives, to Merrill & Loomis, to Mrs. Ormsby, to E. Whitney, to a lodge of Odd Fellows, to J. Shaw, to A. J. Williams, to J. W. Hamilton, to H. Stanley, to Johnson & Comstock, and to school district No. (5) five, of the town of Alma, respectively, all which eleven portions are part and parcel of the forty-acre tract aforesaid; also excepting and reserving as aforesaid so much of the southeast quarter of the southeast quarter of section twenty-two (22), in the township and range aforesaid, as, in triangular form, has been heretofore conveyed to and occupied by one M. Bone; also excepting and reserving as aforesaid all pine timber upon said one hundred and fifty foot strip, which timber shall be removed by the grantors within sixty days after notice thereto; also excepting and reserving as aforesaid all buildings on all and singular the aforesaid premises not belonging to the grantors, and the aforesaid described and hereby conveyed premises are hereby conveyed, subject to all existing legally laid out highways—

(The following is the map mentioned.)

together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining, and all the estate, right, title, interest, claim, and demand whatsoever of the said parties of the first part, either in law or equity, either in possession or expectancy, of and to the above-bargained premises and their hereditaments and appurtenances:

To have and to hold the said premises as above described, with the hereditaments & appurtenances, unto the said party of the second part and to his heirs and assigns forever; and the said Leander G. Merrill & Benjamin H. Merrill, for themselves and for their heirs,

executors, and administrators, do covenant, grant, bargain,
290 and agree to and with the said party of the second part, his heirs and assigns, that at the time of the ensealment and delivery of these presents said grantors or some of them are well seized of the premises above described, as of good, sure, perfect, absolute, and indefeasible estate of inheritance in the law in fee-simple, and that the same are free and clear of all incumbrances whatever, except such highways as aforesaid; and that the above-bargained premises in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against all and every person or persons lawfully claiming the whole or any part thereof they will forever warrant and defend.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

L. G. MERRILL. [SEAL.]
CATHERINE MERRILL. [SEAL.]
B. H. MERRILL. [SEAL.]
NANCY MERRILL. [SEAL.]

Signed, sealed, and delivered in presence of—twenty-seven (27) changed to twenty-two (22) before execution—
W. H. MORRIS, JR.
T. P. BINGHAM.

STATE OF WISCONSIN, } ss:
County of Brown, }

Be it remembered that on the 20th day of July, A. D. 1877, personally came before me the above named Leander G. Merrill,
291 Nancy Merrill, Benjamin H. Merrill, & Catherine Merrill, to me known to be the persons who executed the foregoing deed, and acknowledged the same to be their free act and deed for the uses and purposes therein mentioned.

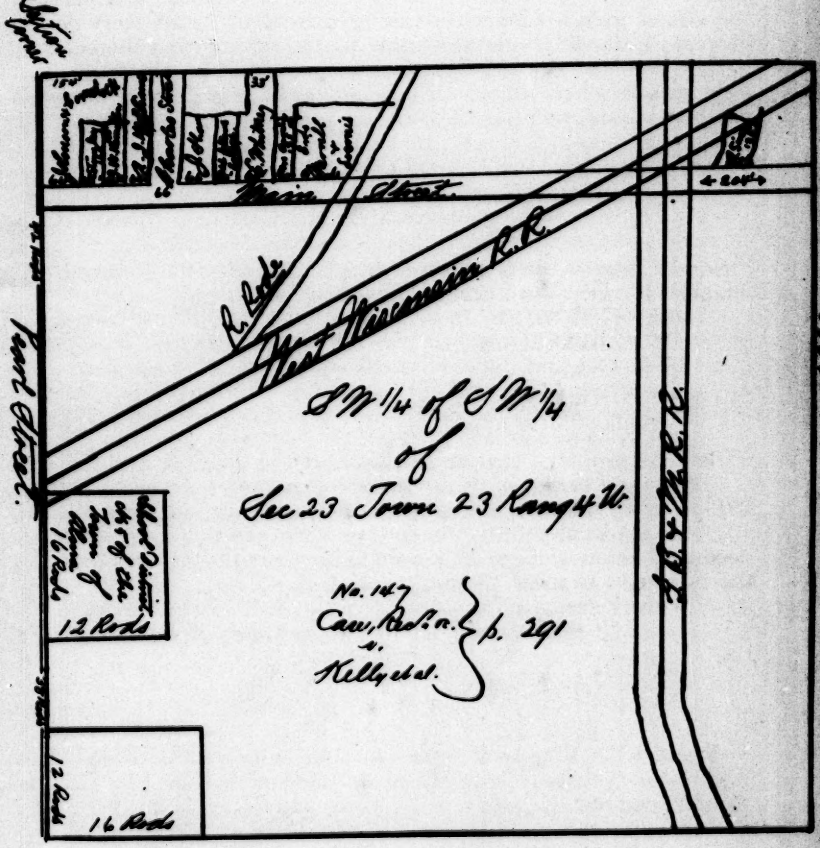
[NOTARY SEAL.] T. P. BINGHAM,
Notary Public, Brown Co., Wis.

(Here follows diagram, marked p. 291.)

(Endorsed:) Register's office, Jackson county. Recorded July 23, 1877, at 9 o'clock a. m., in vol. 23 of deeds, page 517. Geo. H. Perkins, register.

STATE OF WISCONSIN, } ss:
County of Jackson, }

292 I, E. O. Gullord, register of deeds of the said county of Jackson, do hereby certify that I have carefully compared the annexed copy with the original warranty deed now on record in this office, and that it is a correct transcript therefrom and of the whole thereof.


Section Corner
Main Street
R. Rods
West Wisconsin R.R.
Pearl Street
SW 1/4 of SW 1/4
of
Sec 23 Town 23 Rang 4 W.
No. 147
Case, Rec'r. &c.
v.
Kelly et al.
p. 291
Short District
ch 5 of the
Town of
Alma
16 Rods
12 Rods
12 Rods
16 Rods
G.B.&M.R.R.

In testimony whereof I have hereunto set my hand officially and affixed the seal of said office, at Black River Falls, in said county, this 20th day of October, A. D. 1880.

E. O. GULLORD,
Register of Deeds,
By G. M. PERRY, *Dep'ty.*

PLAINTIFF'S EXHIBIT No. 2. Fr. Bloodgood, Exam'r, &c.

This indenture, made this twenty-ninth day of May, in the year of our Lord one thousand eight hundred and seventy-seven, between Sally E. Munger, of Seymour, Outagamie county, Wisconsin, party of the first part, and David M. Kelly, of the city of Green Bay, Brown county, Wisconsin, party of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of one dollar to her in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, has given, granted, bargained, sold, remised, released, aliened, conveyed, and confirmed, and by these presents does give,
293 grant, bargain, sell, remise, release, alien, convey, and confirm, unto the said party of the second part, his heirs and assigns, forever all that certain tract, piece, or parcel of land situate, lying, and being in the county of Outagamie, State of Wisconsin, and particularly described as follows, to wit: Being all that part or parcel of the southeast quarter of the northeast quarter of section No. thirty-two (32), in township No. twenty-four (24) north, of range No. eighteen (18) east, which is bounded and described as follows, to wit: Commencing at a point situated twenty rods south of a point situated three hundred and thirty-three feet west of the northeast corner of the southeast quarter of the northeast quarter of section No. thirty-two (32), township No. twenty-four (24) north, range eighteen (18) east, said first-mentioned point being the southeast corner of the five-acre tract which was conveyed April 1, 1873, by said party of the first part to said party of the second part, running thence west along the south boundary line of said last-mentioned tract a distance of six hundred and sixty (660) feet; thence south a distance of about five feet to the north boundary line of the East and West street, which, according to the recorded plat of Seymour, lies between block No. 20 on the north and blocks numbers 21 and 22 on the south; thence east along said north boundary line of said street a distance of 660 feet; thence north a distance of about five feet to the place of beginning, it being intended to convey by this deed all the land lying between the south boundary line of the five-acre tract aforesaid and the north boundary line of said East and West street, be the same more or less, together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise ap-
pertaining, and all the estate, right, title, interest, claim, or
294 demand whatsoever of the said party of the first part, either in law or equity, either in possession or expectancy, of, in, and to the above-bargained premises and their hereditaments and ap-

purtenances; to have and to hold the said premises as above described, with the hereditaments and appurtenances, unto the said party of the second part and to his heirs and assigns forever.

And the said Sally E. Munger, for her heirs, executors, and administrators, does covenant, bargain, and agree to and with the said party of the second part, his heirs and assigns, that at the time of the ensealing and delivery of these presents she is well seized of the premises above described as of a good, sure, perfect, absolute, and indefeasible estate of inheritance in the law in fee-simple, and that the same are free and clear from all incumbrances whatever; and that the above-bargained premises in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against all and every person or persons lawfully claiming the whole or any part thereof she will forever warrant and defend.

In witness whereof the said party of the first part has hereunto set her hand and seal the day and year first above written.

295 SALLY E. MUNGER. [SEAL.]

Signed, sealed, and delivered in presence of—
C. E. McINTOSH.
E. W. MERRILL.

STATE OF WISCONSIN, *County of Outagamie,* } *ss:*

Be it remembered that on the 29th day of May, A. D. 1877, personally came before me the above-named Sally E. Munger, to me known to be the person who executed the foregoing deed, and acknowledged the same to be her free act and deed for the uses and purposes therein mentioned.

C. E. McINTOSH,
Justice of the Peace.

(Endorsed:) Register's office, Outagamie county, Wis. Received for record the 31st day of May, A. D. 1877, at 11 o'clock a. m., and recorded in vol. 41 of deeds, on page 415. J. A. Bertschy, register.

STATE OF WISCONSIN, *County of Outagamie:*

I, Julius Tuehlke, register of deeds in and for the county and State aforesaid, do hereby certify that I have duly compared the foregoing and annexed copy of a deed, warranty, with the original record thereof as recorded in my said office on the 31st day
296 of May, A. D. 1877, at 11 o'clock a. m., in volume 41 of deeds, on page 415, and that the same is a correct transcript therefrom and of the whole thereof.

In testimony whereof I have hereunto set my hand and affixed the seal of my said office, at Appleton, this 2 day of September, A. D. 1880.

[SEAL.] JULIUS TUEHLKE, *Register,*
By SAM. J. RYAN, *Dep.*

PLAINTIFF'S EXHIBIT No. 3. Fr. Bloodgood, Exam'r, &c.

This indenture, made this first day of April, in the year of our Lord one thousand eight hundred and seventy-three, between Simeon W. Munger & Samantha L., his wife, of the county of Outagamie, State of Wisconsin, parties of the first part, and David M. Kelly, of the city of Green Bay, in said State, party of the second part, witnesseth:

That the said parties of the first part, for and in consideration of the sum of one dollar to them in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, have given, granted, bargained, sold, remised, released, aliened, conveyed, and confirmed, and by these presents do give, grant, bargain, sell, remise, release, alien, convey, and confirm, unto the said party of the second part, his heirs and assigns, for-
297 ever all the certain tracts, pieces or parcels of land situate, lying, and being in the county of Outagamie, State of Wisconsin, and particularly described as follows: All that part of the north half of the northeast quarter of section No. thirty-two (32), in township No. twenty-four (24) north, range No. eighteen (18) east, which lies on the southwardly side of the northwardly side line of a strip of land one hundred feet in width, running through the eighty-acre tract aforesaid and other adjacent lands, extending fifty feet of such width on each side of the centre line of the track of the Green Bay & Lake Pepin railway as now laid and operated, excepting and reserving, however, therefrom so much of said strip as was in the the spring of 1871 contracted to John Whitney; also that part of the northeast quarter of the northwest quarter of section No. thirty-three (33), in township and range aforesaid, which lies on the southwardly side of the northwardly side line of a strip of land one hundred (100) feet in width running through the forty-acre tract of land aforesaid and other adjacent lands, extending fifty feet of such width on each side of the centre line of the tract of the railway aforesaid as now laid and operated, containing five acres of land, more or less, excepting and reserving, however, from the tract last aforesaid so much thereof as was, by the parties of the first part on the 19th of October, 1870, conveyed to the Green Bay & Lake Pepin Railway Company, together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining; and all the estate, right, title, interest, claim, or demand whatsoever of the said parties of the first part, either in law or equity, either in possession or expectancy, of, in, and to the above-bargained premises and their hereditaments and appurtenances:

To have and to hold the said premises as above described, with the hereditaments and appurtenances, unto the said party of
298 the second part and to his heirs and assigns forever.

And the said Simeon W. Munger, for himself, for his heirs, executors, and administrators, doth covenant, grant, bargain, and agree to and with the said party of the second part, his heirs and assigns, that at the time of the ensealing and delivery of these presents he is well seized of the premises above described as of a good, sure,

perfect, absolute, and indefeasible estate of inheritance in the law, in fee-simple, and that the same are free and clear from all incumbrances whatever, and that the above-bargained premises in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against all and every person or persons lawfully claiming the whole or any part thereof he will forever warrant and defend.

In witness wheref the said parties of the first part have hereunto set their hands and seals the day and year first above written.

S. W. MUNGER. [SEAL.]
SAMANTHA L. MUNGER. [SEAL.]

Signed, sealed, and delivered in presence of—
G. A. RANDALL,
C. E. McINTOSH.

STATE OF WISCONSIN, } ss:
County of Outagamie, }

Be it remembered that on the 1st day of April, A. D. 1873,
299 personally came before me the above-named Simeon W. Munger & Samantha L., his wife, to me known to be the persons who executed the said deed, and acknowledged the same to be their free act and deed for the uses and purposes therein mentioned.

[NOTARY SEAL.] C. E. McINTOSH,
Notary Public.

(Endorsed:) Register's office, Outagamie county, Wis. Received for record the 2 day of January, A. D. 1877, at 9 o'clock a. m., and recorded in vol. 41 of deeds, on page 90. —— ——, register.

STATE OF WISCONSIN, *County of Outagamie:*

I, Julius Tuehlke, register of deeds in and for the county and State aforesaid, do hereby certify that I have duly compared the foregoing and annexed copy of a W. deed with the original record thereof as recorded in my said office, on the 2d day of January, A. D. 1877, at 9 o'clock a. m., in volume 41 of deeds, on page 90, and that the same is a correct transcript therefrom and of the whole thereof.

In testimony whereof I have hereunto set my hand and affixed the seal of my said office at Appleton, this 2 day of Sept., A. D. 1880.

[SEAL.] J. TUEHLKE, *Register,*
By S. J. RYAN, *Dep.*

300 PLAINTIFF'S EXHIBIT No. 4. Fr. Bloodgood, Exam'r, &c.

This indenture, made this first day of April, in the year of our Lord one thousand eight hundred and seventy-three, between Sally E. Munger, of the county of Outagamie & State of Wisconsin, parties

of the first part, and David M. Kelly, of the city of Green Bay, in said State, party of the second part, witnesseth:

That the said parties of the first part, for and in consideration of the sum of one dollar to them in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, have given, granted, bargained, sold, remised, released, aliened, conveyed, and confirmed, and by these presents do give, grant, bargain, sell, remise, release, alien, convey, and confirm, unto the said party of the second part, his heirs and assigns, forever all that certain tract, piece, or parcel of land situate, lying, and being in the county of Outagamie, State of Wisconsin, and particularly described as follows, to wit:

All that part of the southeast quarter of the northeast quarter of section thirty-two (32), township twenty-four (24) north, range eighteen (18) east, bounded as follows: Commencing at a point three hundred and thirty-three (333) feet west of the northeast corner of said southeast quarter of northeast quarter of section
301 thirty-two (32), thence west forty rods; thence south twenty rods; thence east forty rods; thence north twenty rods, to place of beginning, containing five acres of ground, together with all and singular the hereditaments and appurtenances thereunto belonging or in any wise appertaining, and all the estate, right, title, interest, claim, or demand whatsoever of the said party of the first part, either in law or equity, either in possession or expectancy, of, in, and to the above-bargained premises and their hereditaments and appurtenances; to have and to hold the said premises as above described, with the hereditaments and appurtenances, unto the said party of the second part and to his heirs and assigns forever.

And the said Sally E. Munger, for herself & for her heirs, executors, and administrators, doth covenant, grant, bargain, and agree to and with the said party of the second part, his heirs and assigns, that at the time of the ensealing and delivery of these presents she is well seized of the premises above described as of a good, sure, perfect, absolute, and indefeasible estate of inheritance in the law, in fee-simple, and that the same are free and clear from all incumbrances whatever, and that the above-bargained premises
302 in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against all and every person or persons lawfully claiming the whole or any part thereof she will forever warrant and defend.

In witness whereof the said party of the first part has hereunto set her hand and seal the day and year first above written.

SALLY E. MUNGER. [SEAL.]

Signed, sealed, and delivered in the presence of—

C. E. McINTOSH.

G. A. RANDALL.

STATE OF WISCONSIN, } ss:
County of Outagamie, }

Be it remembered that on the 1st day of April, A. D. 1873, personally came before me the above-named Sally E. Munger, to me known to be the person who executed the said deed, and acknowledged the same to be her free act and deed for the uses and purposes therein mentioned.

[NOTARY SEAL.] C. E. McINTOSH,
Notary Public.

(Endorsed:) Register's office, Outagamie county, Wis. Received for record the 2 day of Jan., A. D. 1877, at 9 o'clock, a. m., and recorded in vol. 41 of deeds, on page 91. —— ——, register.

STATE OF WISCONSIN, } ss:
County of Outagamie, }

303 I, Julius Tuehlke, register of deeds in and for the county and State aforesaid, do hereby certify that I have duly compared the foregoing and annexed copy of a warranty deed with the original record thereof as recorded in my said office on the 2d day of Jan., A. D. 1877, at 9 o'clock a. m., in volume 41 of deeds, on page 91, and that the same is a correct transcript therefrom and of the whole thereof.

In testimony whereof I have hereunto set my hand and affixed the seal of my said office, at Appleton, this 2d day of Sept., A. D. 1880.

[SEAL.] JULIUS TUEHLKE, *Register,*
By SAM. J. RYAN, *Dep.*

PLAINTIFF'S EXHIBIT No. 5. Fr. Bloodgood, Exam'r, &c.

This indenture, made this first day of April, in the year of our Lord one thousand eight hundred and seventy-three, between Henry Robbins & Minnie, his wife, of the county of Outagamie & State of Wisconsin, parties of the first part, and David M. Kelly, of the city of Green Bay, in said State, party of the second part, witnesseth:

That the said parties of the first part, for and in consideration of the sum of one dollar to them in hand paid by the said party of the second part, the receipt whereof is hereby confessed and
304 acknowledged, have given, granted, bargained, sold, remised, released, aliened, conveyed, and confirmed, and by these presents doth give, grant, bargain, sell, remise, release, alien, convey, and confirm, unto the said party of the second part, his heirs and assigns, forever all that certain tract, piece, or parcel, of land situate, lying, and being in the county of Outagamie, State of Wisconsin, and bounded as follows, to wit:

Commencing at a point two hundred and thirty-seven (237) feet north of the southeast corner of the northwest quarter of the northwest quarter of section thirty-three (33), town. twenty-four (24) north, range eighteen (18) east, thence north three hundred and twenty-eight and two-tenths ($328\frac{2}{10}$) feet; thence west nine hundred

and fifty-four and five-tenths ($954\frac{5}{10}$) feet to a point three hundred and thirty feet east of the west line of said section thirty-three; thence south two hundred and twenty-eight and two-tenths ($228\frac{2}{10}$) feet to a point fifty feet north of the center line of the Green Bay and Lake Pepin railway; thence westerly parallel to said center line of railway to the west line of said section thirty-three; thence south one hundred feet; thence easterly parallel to center line of said railway to the place of beginning, containing eight (8) acres of ground, more or less.

This deed is intended to convey a strip of land fifty feet wide on each side of the center line of the Green Bay and Lake Pepin railway through the N. W. quarter of the N. W. quarter of said section thirty-three, and also a tract of five acres adjoining same, together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining, and all the estate, right, title, interest, claim, or demand whatsoever of the said parties of the first part, either in law or equity, either in possession or expectancy, of, in, and to the above-bargained premises and their hereditaments and appurtenances; to have and to hold the said premises as above described, with the hereditaments and appurtenances, unto the said party of the second part and to his heirs and assigns forever.

305 And the said Henry Robbins, for himself, for his heirs, executors, and administrators, doth covenant, bargain, and agree to and with the said party of the second part, his heirs and assigns, that at the time of the ensealing and delivery of these presents he is well seized of the premises above described as of a good, sure, perfect, absolute, and indefeasible estate of inheritance in the law, in fee-simple, and that the same are free and clear from all incumbrances whatever, and that the above-bargained premises in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against all and every person or persons lawfully claiming the whole or any part thereof he will forever warrant and defend.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

HENRY ROBBINS. [SEAL.]
MINNIE ROBBINS. [SEAL.]

Signed, sealed, and delivered in presence of—all interlineations & erasures before signing—
C. E. McINTOSH.
G. A. RANDALL.

STATE OF WISCONSIN, *County of Outagamie:*

Be it remembered that on the first day of April, 1873, per-
306 sonally came before me the above-named Henry Robbins and Minnie, his wife, to me known to be the persons who executed the said deed, and acknowledged the same to be their free act and deed for the uses and purposes therein mentioned.

[NOTARY SEAL.] C. E. McINTOSH,
Notary Public.

(Endorsed:) Register's office, Outagamie county, Wis. Received for record the 2d day of January, A. D. 1877, at 9 o'clock a. m., and recorded in vol. 41 of deeds on page 92. —— ——, register.

STATE OF WISCONSIN, }
County of Outagamie, } *ss:*

I, Julius Tuehlke, register of deeds in and for the county and State aforesaid, do hereby certify that I have duly compared the foregoing and annexed copy of a W. deed with the original record thereof as recorded in my said office on the 2d day of January, A. D. 1877, at 9 o'clock a. m., in volume 41 of deeds, on page 92, and that the same is a correct transcript therefrom and of the whole thereof.

In testimony whereof I have hereunto set my hand, and affixed the seal of my said office, at Appleton, this 2d day of September, A. D. 1880.

[SEAL.] JULIUS TUEHLKE, *Register*,
By SAM. J. RYAN, *Dep.*

307 PLAINTIFF'S EXHIBIT No. 6. Fr. Bloodgood, Examiner, &c.

This indenture, made this first day of April, in the year of our Lord one thousand eight hundred and seventy-six, between Frederick Muhl and Dorothea Muhl, his wife, of Outagamie county, Wisconsin, parties of the first part, and David M. Kelly, of the city of Green Bay, Brown county, Wisconsin, party of the second part, witnesseth:

That the said parties of the first part, for and in consideration of the sum of one dollar and other valuable considerations them thereto moving and to them in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, have given, granted, bargained, sold, remised, released, aliened, conveyed, and confirmed, and by these presents do give, grant, bargain, sell, remise, release, alien, convey, and confirm, unto the said party of the second part, his heirs and assigns, forever all that certain tract, piece, or parcel of land situate, lying, and being in the county of Outagamie, State of Wisconsin, and particularly described as follows, to wit:

All that part of the southeast quarter of the northwest quarter of section No. thirty-three (33), in township No. twenty-four
308 (24) north, of range eighteen (18) east, bounded and described as follows, to wit: Commencing at the northwest corner of said southeast quarter of the northwest quarter; thence running southwardly on and along the westerly boundary line of said Government subdivision, a part of which boundary line is the easterly boundary line of block No. forty-five (45), in D. M. Kelly's addition to the village of Seymour, according to the recorded plat of said addition, a distance of two hundred and thirteen (213) feet; thence running eastwardly a distance of one thousand and thirty (1,030) feet on and along the southerly boundary line of said block, considered as produced and parallel with the southerly boundary line of said Government subdivision; thence running northwardly on and along a line drawn parallel with the easterly boundary line of

said Government subdivision to the southerly boundary line of the 100-feet strip of land now used and occupied by the Green Bay and Minnesota Railroad Company as its right of way across a portion of said Government subdivision; thence running on and along said southerly boundary line of said 100-feet strip of land to the point of its intersection with the northerly boundary line of said Government subdivision; thence along the northerly boundary line of said Government subdivision to the place of beginning, containing five (5) acres of land, more or less, together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining; and all the estate, right, title, interest, claim, or demand whatsoever of the said parties of the first part, either in law or equity, either in possession or expectancy, of, in, and to the above-bargained premises and their hereditaments and appurtenances:

To have and to hold the said premises as above described, with the hereditaments and appurtenances, unto the said party of the second part and to his heirs and assigns forever.

And the said Frederick Muhl, for himself & for his heirs, executors, and administrators, doth covenant, grant, bargain, and agree to and with the said party of the second part, his heirs and assigns, that at the time of the ensealing and delivery of these pres-
309 ents he was well seized of the premises above described as of a good, sure, perfect, absolute, and indefeasible estate of inheritance in the law, in fee-simple, and that the same are free and clear from all incumbrances whatever, and that the above-bargained premises in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against all and every person or persons lawfully claiming the whole or any part thereof he will forever warrant and defend.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

FREDERICK MUEHL. [SEAL.]
DOROTHEA MUEHL. [SEAL.]

Signed, sealed, and delivered in presence of—
C. E. McINTOSH.
LIZZIE MUEHL.

STATE OF WISCONSIN, } ss:
County of Outagamie, }

Be it remembered that on the 29th day of July, A. D. 1876, personally came before me the above-named Frederick Muhl & Dorothea Muhl, his wife, to me known to be the persons who executed the foregoing deed, and acknowledged the same to be their free act and deed for the uses and purposes therein mentioned.

C. E. McINTOSH,
Justice of the Peace.

310 (Endorsed:) Register's office, Outagamie county, Wis. Received for record the 5 day of Aug., A. D. 1876, at 9 o'clock a. m., and recorded in vol. 40 of deeds, on page 432. —— ——, register.
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STATE OF WISCONSIN, } ss:
County of Outagamie, }

I, Julius Tuehlke, register of deeds in and for the county and State aforesaid, do hereby certify that I have duly compared the foregoing and annexed copy of a war. deed with the original record thereof as recorded in my said office on the 5th day of August, A. D. 1876, at 9 o'clock a. m., in volume 40 of deeds, on page 432, and that the same is a correct transcript therefrom and of the whole thereof.

In testimony whereof I have hereunto set my hand and affixed the seal of my said office, at Appleton, this 2d day of September, A. D. 1880.

[SEAL.] JULIUS TUEHLKE, *Register*,
By SAM. J. RYAN, *Dep.*

PLAINTIFF'S EXHIBIT No. 7. Fr. Bloodgood, Examiner, &c.

This indenture, made this first day of April, in the year of our Lord one thousand eight hundred and seventy-three, between Frederick Mühl and Dorothea Mühl, his wife, of Outagamie county &
State of Wisconsin, parties of the first part, and David M.
311 Kelly, of the city of Green Bay, in said State, party of the second part, witnesseth:

That the said parties of the first part, for and in consideration of the sum of one dollar to them in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, have given, granted, bargained, sold, remised, released, aliened, conveyed, and confirmed, and by these presents do give, grant, bargain, sell, remise, release, alien, convey, and confirm, unto the said party of the second part, his heirs and assigns, forever all the certain tracts, pieces, or parcels of land situate, lying, and being in the county of Outagamie, State of Wisconsin, and particularly described as follows, to wit:

All that part of the southwest quarter of the northwest quarter of section thirty-three (33) bounded as follows: Commencing two hundred and ninety-seven (297) feet east of the northwest corner of said southwest quarter of northwest quarter of section thirty-three (33); thence east on north line of said forty-acre tract one thousand and twenty-three (1,023) feet to the east line of said forty-acre tract; thence south on the east line of said forty-acre tract two hundred and thirteen (213) feet; thence west one thousand and twenty-three (1,023) feet; thence north two hundred and thirteen (213) feet to place of beginning, containing five acres of land, more or less; also all that part of the southeast quarter of the northwest quarter of said section which lies within a strip of land one hundred (100) feet in width, running through the forty-acre tract last aforesaid and other adjacent lands, and extending fifty feet of such width on each side of the center line of the Green Bay and Lake Pepin railway as now laid and operated, together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining, and all the estate, right, title, interest, claim, or demand whatsoever

of the said parties of the first part, either in law or equity,
312 either in possession or expectancy, of, in, and to the above-bargained premises and their hereditaments and appurtenances; to have and to hold the said premises as above described, with the hereditaments and appurtenances, unto the said party of the second part and to his heirs and assigns forever.

And the said Frederick Mühl, for himself & for his heirs, executors, and administrators, doth covenant, grant, bargain, and agree to and with the said party of the second part, his heirs and assigns, that at the time of the ensealing and delivery of these presents he is well seized of the premises above described as of a good, sure, perfect, absolute, and indefeasible estate of inheritance in the law, in fee-simple, and that the same are free and clear from all incumbrances whatever, and that the above-bargained premises, in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against all and every person or persons lawfully claiming the whole or any part thereof he will forever warrant and defend.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

313 FREDERICK MUEHL. [SEAL.]
DOROTHEA MÜHL. [SEAL.]

Signed, sealed, and delivered in presence of—
C. E. McINTOSH.
G. A. RANDALL.

STATE OF WISCONSIN, } ss:
County of Outagamie, }

Be it remembered that on the 1st day of April, A. D. 1873, personally came before me the above-named Frederick Mühl & Dorothea, his wife, to me known to be the persons who executed the said deed, and acknowledged the same to be their free act and deed for the uses and purposes therein mentioned.

[NOTARY SEAL.] C. E. McINTOSH,
Notary Public.

(Endorsed:) Register's office, Outagamie county, Wis. Received for record the 2d day of Jan., A. D. 1877, at 9 o'clock a. m., and recorded in vol. 41 of deeds, on page 93. —— ——, register.

STATE OF WISCONSIN, } ss:
County of Outagamie, }

I, Julius Tuehlke, register of deeds in and for the county and State aforesaid, do hereby certify that I have duly compared the foregoing and annexed copy of a warranty deed with the original record thereof as recorded in my said office on the 2d day of January, A. D. 1877, at 9 o'clock a. m., in volume 41 of deeds, on page 93,
314 and that the same is a correct transcript therefrom and of the whole thereof.

In testimony whereof I have hereunto set my hand and affixed the seal of my said office, at Appleton, this 2d day of September, A. D. 1880.

[SEAL.] JULIUS TUEHLKE, *Register*,
By SAM. J. RYAN, *Dep.*

PLAINTIFF'S EXHIBIT No. 8. Fr. Bloodgood, Examiner.

This indenture, made the 23d day of August, in the year of our Lord one thousand eight hundred and seventy-three, between Ebenezer Thurston & Mary E., his wife, of the town of Preston, in the county of Trempealeau and State of Wisconsin, party of the first part, and David M. Kelly, Henry Ketchum, & George Hiles, all of the State of Wisconsin, parties of the second part, witnesseth:

That the said part- of the first part, for and in consideration of the sum of one dollars to us in hand paid by the said parties of the second part, the receipt whereof is hereby confessed and acknowledged, ha- given, granted, bargained, sold, remised, released, aliened, conveyed, and confirmed, and by these presents do*th* give, grant, bargain, sell, remise, release, alien, convey, and confirm, unto the said parties of the second part, their heirs and assigns, forever
315 the following-described real estate, situated in the county of Trempealeau and State of Wisconsin, to wit:

All of the northwest quarter of the southeast quarter of section sixteen, town. twenty-one (21), range seven (7) west, containing forty acres of land, according to Government survey, together with all and singular the hereditamerts and appurtenances thereunto belonging or in anywise appertaining, and all the estate, right, title, interest, claim, or demand whatsoever of the said parties of the first part, either in law or equity, either in possession or expectancy, of, in, and to the above-bargained premises, with the hereditaments and appurtenances:

To have and to hold the said premises above described, with the hereditaments and appurtenances, unto the said parties of the second part, their heirs and assigns, forever; and the said Thurston & wife, for their heirs, executors, and administrators, do*th* covenant, grant, bargain, and agree to and with the said parties of the second part, their heirs and assigns, that at the time of ensealing and delivery of these presents they were well seized of the premises above described as of a good, sure, perfect, absolute, and indefeasible estate of inheritance in the law, in fee-simple, and that the same are
316 free and clear from all incumbrances whatever, and that the above-bargained premises in the quiet and peaceable possession of the said parties of the second part, their heirs and assigns, against all and every person or persons lawfully claiming the whole or any part thereof they will forever warrant and defend.

In witness whereof the said parties of the first part ha*th* hereunto set their hands and seals the day and year first above written.

EBENEZER THURSTON. [L. S.]
MARY E. THURSTON. [L. S.]

Signed, sealed, and delivered in presence of—
DUKE PORTER.
HENRY LAKE.

STATE OF WISCONSIN, } ss:
County of Trempealeau, }

Be it remembered that on the 22d day of August, A. D. 1873, personally came before me the above-named Ebenezer Thurston & Mary E., his wife, to me known to be the persons who executed the said deed, and acknowledged the same to be their free act and deed for the uses and purposes therein mentioned.

HENRY LAKE,
Justice of the Peace.

STATE OF WISCONSIN, } ss:
Trempealeau County, }

OFFICE OF THE REGISTER OF DEEDS.

I, John O. Melby, register of deeds in and for said county,
317 do hereby certify that I have carefully compared the foregoing and annexed copy of warranty deed with the records in my office, and that it is a true transcript thereof and of the whole thereof as the same remains of record in this office of register of deeds, on page 42, volume 16, of deeds, and the same was recorded March 31, 1876, at 4 o'clock p. m.

Witness my hand and official seal, at Whitehall, this 5th day of August, A. D. 1880.

[SEAL.] JOHN O. MELBY,
Register of Deeds.

PLAINTIFF'S EXHIBIT No. 9. Fr. Bloodgood, Examiner, &c.

This indenture, made this twenty-second day of October, in the year of our Lord one thousand eight hundred and seventy-two, between Marquis Wood & Jenny, his wife, of the town of Little Wolf, county of Waupaca & State of Wisconsin, parties of the first part, and David M. Kelly, of Green Bay, State of Wisconsin, party of the second part, witnesseth:

That the said parties of the first part, for and in consideration of the sum of one dollar, to them in hand paid by the said party of the second part, the receipt whereof is hereby confessed and ac-
318 knowledged, hath given, granted, bargained, sold, remised, released, aliened, conveyed, and confirmed, and by these presents doth give grant, bargain, sell, remise, release, alien, convey, and confirm, unto the said party of the second part, his heirs and assigns, forever the following-described real estate, situated in the county of Waupaca and State of Wisconsin, to wit:

All of the west half of the northeast quarter & the north half of the northeast quarter of the southeast quarter of section twenty-one (21), town. twenty-three (23), range thirteen (13) east, in the county and State aforesaid, supposed to contain one hundred acres of land according to Government survey, together with all and

singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining, and all the estate, right, title, interest, claim, or demand whatsoever of the said parties of the first part, either in law or equity, either in possession or expectancy, of, in, and to the above-bargained premises and their hereditaments and appurtenances; to have and to hold the said premises as above described, with the hereditaments and appurtenances, unto the said party of the second part and to his heirs and assigns forever.

And the said Wood & wife, for themselves, their heirs,
319 executors, and administrators, do*th* covenant, grant, bargain, and agree to and with the said party of the second part, his heirs and assigns, that at the time of the ensealing and delivery of these presents they were well seized of the premises above described as of a good, sure, perfect, absolute, and indefeasible estate of inheritance in the law, in fee-simple, and that the same are free and clear from all incumbrances whatever, and that the above-bargained premises in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against all and every person or persons lawfully claiming the whole or any part thereof they will forever warrant and defend.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

MARQUIS WOOD. [SEAL.]
JENNIE WOOD. [SEAL.]

Signed, sealed, and delivered in presence of—
T. H. EARLE.
E. A. SCOTT.

STATE OF WISCONSIN, }
County of Waupaca, } ss:

Be it remembered that on the 22d day of October, A. D. 1872, personally came before me the above-named Marquis Wood & Jennie, his wife, to me known to be the persons who executed
320 the said deed, and acknowledged the same to be their free act and deed for the uses and purposes therein mentioned.

E. A. SCOTT,
Justice of the Peace.

Received for record at 8 o'clock a. m., April 4th, 1876.
OLE O. HOLE, *Register.*

STATE OF WISCONSIN, }
Waupaca County, } ss:

I, J. H. Woodworth, register of deeds in and for the county of Waupaca, State of Wisconsin, do hereby certify that I have compared the foregoing with the original record of a warranty deed and acknowledgment of same and certificate of record thereof from Marquis Wood & wife to David M. Kelly, recorded in this office on the 4th day of April, A. D. 1876, at 8 o'clock a. m., in vol. 43 of deeds, page 288, and that it is a correct transcript therefrom and the whole thereof as the same remains in my office and custody.

In testimony whereof I have hereunto set my hand and affixed my official seal this 31st day of August, A. D. 1880.

[SEAL.] J. H. WOODWORTH,
Register of Deeds.

PLAINTIFF'S EXHIBIT No. 10. Fr. Bloodgood, Examiner, &c.

This indenture, made this twentieth day of July, in the
321 year of our Lord one thousand eight hundred and seventy-three, between Isaac A. Briggs and Elizabeth, his wife, of the county of Trempealeau and State of Wisconsin, of the first part, and Geo. Hiles and Henry Ketchum, of the county of Wood and State of Wis., of the second part, witnesseth:

That the said part- of the first part, for and in consideration of the sum of eight hundred dollars to them in hand paid by the partys of the second part, the receipt of which is hereby acknowledged, have given, granted, bargained, sold, remised, released, aliened, and confirmed, and by these presents do give, grant, bargain, sell, remise, release, alien, and confirm, unto the said part- of the second part, — heirs and assigns, forever the following-described premises and real estate, lying and being in the county of Trempealeau and State of Wisconsin, to wit:

The west half of northeast quarter and the southwest — of northwest quarter and the northwest — of southwest quarter and all of the northeast quarter of southwest quarter lying north of Main street, in the village of Arcadia, and northwest of railroad track; all of the southeast quarter of northwest quarter lying east of the Trempealeau river; also ten acres of the northwest — of southeast quarter, being in the N. W. corner, forty rods square; all of the above-described land lying and being in sec. 32, town. twenty-one north, of range nine west. One-third of the above-described land is deeded to Henry Ketchum and two-thirds of the above-described land is deeded to George Hiles, it all being joint property, about two hundred acres, the same more or less; together with all and sin-
322 gular the hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, and the issues and profits thereof, and all the estate, right, title, interest, or claim or demand whatsoever of the said parties of the first part, either in law or equity, of and to the above-bargained premises, with the hereditaments and appurtenances:

To have and to hold the said premises above bargained and described, with the appurtenances, unto the said party of the second part, their heirs and assigns, forever; and the said Isaac A. Briggs and Elizabeth, his wife, for themselves and their heirs, executors, and administrators, do covenant, grant, bargain, and agree to and with the said parties of the second part, their heirs and assigns, that at the time of ensealing and delivery of these presents they are well seized of the premises above conveyed as of good, sure, perfect, absolute, and indefeasible estate of inheritance in the law and fee-simple, and have good right, full power, and lawful authority

to grant, bargain, sell, and convey the same in manner and form aforesaid, and the same is free and clear of all former and other grants, bargains, sales, liens, judgments, taxes, assessments, and incumbrances of what kind and nature soever; and the parties of the first part the above-bargained premises in the quiet
323 and peaceable possession of the said parties of the second part, their heirs and assigns, against all and every person or persons lawfully claiming or to claim the whole or any part thereof will warrant and forever defend.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

I. A. BRIGGS. [SEAL.]
ELIZABETH BRIGGS. [SEAL.]

Signed, sealed, and delivered in presence of—
E. D. GORTON.
J. W. HILES.

STATE OF WISCONSIN, } ss:
County of Trempealeau, }

Be it remembered that on the twenty-first day of July, A. D. 1873, personally came before me the above-named I. A. Briggs and Elizabeth, his wife, to me known to be the persons who executed the foregoing deed, and acknowledged the execution thereof to be their free act and deed for the uses and purposes therein mentioned.

P. H. VARNEY,
Justice of the Peace.

STATE OF WISCONSIN, } ss:
Trempealeau County, }

OFFICE OF THE REGISTER OF DEEDS.

I, John O. Melby, register of deeds in and for said county, do hereby certify that I have carefully compared the annexed &
324 foregoing copy of warrantee deed with the records in my office, and that it is a true transcript thereof and of the whole thereof as the same remains of record in this office of register of deeds on page 573, volume 13, of deeds, and the same was duly recorded October 29, 1874, at 4 o'clock p. m.

Witness my hand and official seal, at Whitehall, this 5th day of August, A. D. 1880.

[SEAL.]

JOHN O. MELBY,
Register of Deeds.

PLAINTIFF'S EXHIBIT No. 11. Fr. Bloodgood, Examiner, &c.

This indenture, made the twenty-seventh day of December, in the year of our Lord one thousand eight hundred and seventy-three, between David W. Wade and Harriet M. Wade, his wife, of the county of Trempealeau, State of Wisconsin, of the first part, and Henry Ketchum, of the county of Waupaca, State of Wisconsin, of the second part, witnesseth:

That the said parties of the first part, for and in consideration of

the sum of one hundred dollars to them in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, have given, granted, bargained, sold, remised, released, aliened, conveyed, and confirmed, and by these presents do give, grant, bargain, sell, remise, release, alien, convey, and
325 confirm, unto the said party of the second part, his heirs and assigns, forever the following-described premises and real estate, lying and being in the county of Trempealeau, State of Wisconsin, to wit:

Northeast quarter of the southwest quarter and the northwest — of the southeast quarter of section twenty-three (23), town. twenty-two (22) north, of range eight (8) west, together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, and the issues and profits thereof, and all the estate, right, title, interest, claim, or demand whatsoever of the said party of the first part, either in law or equity, of and to the above-bargained premises, with the hereditaments and appurtenances:

To have and to hold the said premises above bargained and described, with the appurtenances, unto the said party of the second part, his heirs and assigns, forever; and the said David W. Wade and Harriet M., his wife, for themselves and their heirs, executors, and administrators, do covenant, grant, bargain, and agree to and with the said party of the second part, his heirs and assigns, that at the time of ensealing and delivery of these presents they were well seized of the premises above conveyed as of good, sure, per-
326 fect, absolute, and indefeasible estate of inheritance in the law and fee-simple, and have good right, full power, and lawful authority to grant, bargain, sell, and convey the same in manner and form aforesaid, and the same is free and clear of all former and other grants, bargains, sales, liens, judgments, taxes, assessments, and incumbrances of what kind and nature soever; and the above-bargained premises, in the quiet and peaceable possession of the said party of the second part, heirs and assigns, against all and every person or persons lawfully claiming or to claim the whole or any part thereof will warrant and forever defend.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

DAVID W. WADE. [SEAL.]
HARRIET M. CALDWELL WADE. [SEAL.]

Signed, sealed, and delivered in presence of—
T. H. EARLE.

STATE OF WISCONSIN, }
County of Trempealeau, } *ss:*

Be it remembered that on the 27th day of December, A. D. 1873, personally came before me the above-named David W. Wade and Harriet M., his wife, to me known to be the persons who executed

the foregoing deed, and acknowledged the execution thereof to be their free act and deed for the uses and purposes therein men-
327 tioned.

[SEAL OF NOTARY.] T. H. EARLE,
Notary Public.

STATE OF WISCONSIN, } ss:
Trempealeau County, }

OFFICE OF THE REGISTER OF DEEDS.

I, John O. Melby, register of deeds in and for said county, do hereby certify that I have carefully compared the annexed and foregoing copy of warranty deed with the records in my office, and that it is a true transcript thereof and of the whole thereof as the same remains of record in this office of register of deeds on page 305, volume 13, of deeds, and was recorded February 23d, 1874, at 11 o'clock a. m.

Witness my hand and official seal, at Whitehall, this 20th day of August, A. D. 1880.

[SEAL.] JOHN O. MELBY,
Register of Deeds.

PLAINTIFF'S EXHIBIT No. 12. Fr. Bloodgood, Examiner, &c.

This indenture, made this twenty-seventh day of December, in the year of our Lord one thousand eight hundred and seventy-three, between David W. Wade and Harriet M., his wife, of the town of Lincoln, county of Trempealeau, and State of Wisconsin, parties of the first part, and Henry Ketchum, of Waupaca county and
328 State of Wisconsin, party of the second part, witnesseth:

That the said parties of the first part, for and in consideration of the sum of three thousand dollars to them in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, have given, granted, bargained, sold, remised, released, aliened, conveyed, and confirmed, and by these presents do give, grant, bargain, sell, remise, release, alien, convey, and confirm, unto the said party of the second part, heirs and assigns, forever the following-described pieces or parcels of land described as follows, to wit:

The southeast quarter of the southwest quarter, except two and one-half acres lying in the southwest corner used as a burying ground; the southwest quarter of the southeast quarter, the southeast quarter of the southeast quarter, all in section twenty-three (23), and all that part of the southwest quarter — southwest quarter of section twenty-four (24) lying west of the Trempealeau river, and the northwest quarter of the northwest quarter, section twenty-five (25); all the above lands being and lying in town twenty-two (22) north, of range eight (8) west, town of Lincoln, county of Trempealeau, and State of Wisconsin; together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining, and all the estate, right, title, interest, claim, or demand whatsoever of the said parties of the first part, either in law or

equity, either in possession or expectancy, of, in, and to the above-bargained premises and their hereditaments and appurtenances:

To have and to hold the said premises above described, with the hereditaments and appurtenances, unto the said party of the
329 second part and to *their* heirs and assigns forever; and the said David W. Wade and wife, for themselves and their heirs, executors, and administrators, do covenant, bargain, and agree to and with the said party of the second part, *their* heirs and assigns, that at the time of the ensealing and delivery of these presents they were well seized of the premises above described as of good, sure, perfect, absolute, and indefeasible estate of inheritance in the law, in fee-simple, and the same are free and clear from all incumbrances whatever, and that the above-bargained premises in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against all and every person or person lawfully claiming the whole or any part thereof they will forever warrant and defend.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

DAVID W. WADE. [SEAL.]
HARRIET M. WADE. [SEAL.]

Signed, sealed, and delivered in presence of—
T. H. EARLE.
M. L. EARLE.

STATE OF WISCONSIN, } ss:
County of Trempealeau, }

Be it remembered that on the twenty-seventh day of December, A. D. 1873, personally came before me the above-named
330 David W. Wade and Harriet M., his wife, to me known to be the persons who executed the above deed, and acknowledged the execution thereof to be their free act and deed for the uses and purposes therein mentioned.

T. H. EARLE,
Notary Public.

STATE OF WISCONSIN, } ss:
Trempealeau County, }

OFFICE OF THE REGISTER OF DEEDS.

I, John O. Melby, register of deeds in and for said county, do hereby certify that I have carefully compared the annexed and foregoing copy of warranty deed with the records in my office, and that it is a true transcript thereof and of the whole thereof as the same remains of record in this office of register of deeds on page 306, volume 13, of deeds, and was recorded February 23d, 1874, at 11 o'clock a. m.

Witness my hand and official seal, at Whitehall, this 5th day of August, A. D. 1880.

[SEAL.]

JOHN O. MELBY,
Register of Deeds.

PLAINTIFF'S EXHIBIT No. 13. Fr. Bloodgood, Examiner, &c.

This indenture, made this twentieth day of October, in the year of our Lord one thousand eight hundred and seventy-five,
331 between I. A. Briggs and Elizabeth, his wife, of the county of Trempealeau and State of Wisconsin, of the first part, and George Hiles and Henry Ketchum, of the county of —— and State of Wisconsin, of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of fifty dollars to them in hand paid by the party of the second part, the receipt of which is hereby acknowledged, have given, granted, bargained, sold, remised, released, aliened, and confirmed, and by these presents do give, grant, bargain, sell, remise, release, alien, and confirm, unto the said party of the second part, their heirs and assigns, forever the following-described premises and real estate, lying and being in the county of Trempealeau and State of Wisconsin, to wit:

All that part of the north half of the northeast quarter of the southwest quarter of section thirty-two, in town. twenty-one north, of range nine west, lying north of Main street and east of railroad and right of way, in the village of Arcadia, Trempealeau county, Wisconsin. This deed is designed to convey one-third interest to Henry Ketchum and two-thirds interest to George Hiles, together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining and the reversion and reversions, remainder and remainders, and the issues and profits thereof and all the estate, right, title, interest, claim, or demand whatsoever of the said party of the first part, either in law or equity, of and to the above-bargained premises, with the hereditaments and appurtenances:

332 To have and to hold the said premises above bargained and described, with the appurtenances, unto the said party of the second part, their heirs and assigns, forever; and the said I. A. Briggs and wife, for themselves and their heirs, executors, and administrators, do covenant, grant, bargain, and agree to and with the said party of the second part, their heirs and assigns, that at the time of ensealing and delivery of these presents they are well seized of the premises above conveyed as of good, sure, perfect, absolute, and indefeasible estate of inheritance in the law and fee-simple, and have good right, full power, and lawful authority to grant, bargain, sell, and convey the same in manner and form aforesaid, and the same is free and clear of all former and other grants, bargains, sales, liens, judgments, taxes, assessments, and incumbrances of what kind and nature soever; and the party of the first part the above-bargained premises in the quiet and peaceful possession of the said party of the second part, their heirs and assigns, against all and every person or persons lawfully claiming or to claim the whole or any part thereof will warrant and forever defend.

In witness whereof the said party of the first part have hereunto set their hands and seals the day and year first above written.

333 I. A. BRIGGS.
ELIZABETH BRIGGS.

Signed, sealed, and delivered in presence of—
WILLIAM J. FARBER.
J. W. BLAISDELL.

STATE OF WISCONSIN, } ss:
County of Trempealeau, }

Be it remembered that on the 23d day of October, A. D. 1875, personally came before me the above-named I. A. Briggs and Elizabeth, his wife, to me known to be the person- who executed the foregoing deed, and acknowledged the execution thereof to be their free act and deed for the uses and purposes therein mentioned.

P. H. VARNEY,
Justice of the Peace.

STATE OF WISCONSIN, } ss:
Trempealeau County, }

OFFICE OF THE REGISTER OF DEEDS.

I, John O. Melby, register of deeds in and for said county, do hereby certify that I have carefully compared the annexed and foregoing copy of warranty deed with the records in my office, and that it is a true transcript thereof and of the whole thereof as the same remains of record in this office of register of deeds on page 41, volume 16, of deeds, and was recorded March 31, A. D. 1876, at 4 o'clock p. m.

334 Witness my hand and official seal, at Whitehall, this 5th day of August, 1880.

[SEAL.] JOHN O. MELBY,
Register of Deeds.

PLAINTIFF'S EXHIBIT No. 14. Fr. Bloodgood, Examiner, &c.

Randall, Burdick, & Clark to Kelly.

This indenture, made the third day of January, in the year of our Lord one thousand eight hundred and seventy-two, between G. A. Randall and Elizabeth H. Randall, his wife, of the city of Appleton and State of Wisconsin, and Thomas J. Burdick & Lucy A. Burdick, his wife, of the town of Black Creek, Outagamie Co., Wisconsin, and Dorr Clark, of the city of Green Bay, State aforesaid, parties of the first part, and D. M. Kelly, of the city of Green Bay and State of Wisconsin, party of the second part, witnesseth:

That the said parties of the first part, for and in consideration of the sum of one dollar to them in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, have given, granted, bargained, sold, remised, released, aliened, conveyed, and confirmed, and by these presents do give, grant, bargain, sell, remise, release, alien, convey, and confirm, unto the said party of the second part, his heirs and assigns, for-

335 ever the following real estate in Outagamie county, Wisconsin, to wit:

A piece of land in the southwest quarter of the southwest quarter of section nine (9), township twenty-three (23) north, range seven-

teen (17) east, and described as follows: Commencing at the northeast corner of block nine (9) of the recorded plat of the village of Middleburg; thence north two hundred and ninety-five (295) feet to the southeast corner of block five (5) of said plat; thence south 67° 40′ west along the south side of blocks five, four, three, and two to the centre of the county road; thence south one hundred and forty feet (140); thence east along the north line of block six (6) to the northeast corner of said block; thence north 67° 40′ east along the north line of blocks seven, eight, and nine to the place of beginning, together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining and all the estate, right, title, interest, claim, or demand whatsoever of the said parties of the first part, either in law or equity, either in possession or expectancy, of, in, and to the above-bargained premises and their hereditaments and appurtenances; to have and to hold the said premises as above described, with the hereditaments and appurtenances, unto the said party of the second part and to his heirs and assigns forever.

And the said party of the first part, for themselves and their heirs, executors, and administrators, do covenant, bargain, and agree to and with the said party of the second part, his heirs and assigns, that at the time of the ensealing and delivery of these presents they are well seized of the premises above described as of a good, sure, perfect, absolute, and indefeasible estate of inheritance in the law, in fee-simple, and that the same are free and clear
336 from all incumbrances whatever; and that the above-bargained premises in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against all and every person or persons lawfully claiming the whole or any part thereof they will forever warrant and defend.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

G. A. RANDALL. [SEAL.]
ELIZABETH H. RANDALL. [SEAL.]
THOMAS J. BURDICK. [SEAL.]
LUCY A. BURDICK. [SEAL.]
DORR CLARK. [SEAL.]

Signed, sealed, and delivered in presence of—

MATHEW McCOMB,
JOHN HARNEY,
Witness- for first two signatures.
F. D. HARNEY,
GEO. HUSE,
Witness- for Burdick & wife.
VAN BUREN BROMLEY,
ROBERT C. GEORGE,
As to Dorr Clark.

STATE OF WISCONSIN, } ss:
County of Outagamie, }

Be it remembered that on the third day of January, A. D. 1872, personally came before me the above-named G. A. Randall & Elizabeth H., his wife, to me known to be two of the persons who executed the above deed, and acknowledged the same to be their free act and deed for the uses and purposes therein mentioned.

MATHEW McCOMB,
Notary Public, Wisconsin.

337 STATE OF WISCONSIN, } ss:
County of Outagamie, }

Be it remembered that on the — day of ——, A. D. 1872, personally came before me the above-named Thomas J. Burdick and Lucy A. Burdick, his wife, to me known to be two of the persons who executed the above deed, and acknowledged the same to be their free act and deed for the uses and purposes therein mentioned.

GEO. HUSE,
Justice of the Peace.

STATE OF WISCONSIN, } ss:
County of Brown, }

Be it remembered that on the fifteenth day of January, A. D. 1873, personally came before me the above-named Dorr Clark, to me known to be one of the persons who executed the above deed, and acknowledged the same to be his free act and deed for the uses and purposes therein mentioned.

VAN BUREN BROMLEY,
Notary Public.

(Endorsed :) Register's office, Outagamie county, Wis. Received for record the 15th day of December, A. D. 1877, at 2 o'clock p. m., and recorded in vol. 43 of deeds, on page 636. —— ——, register.

STATE OF WISCONSIN, } ss:
County of Outagamie, }

I, Julius Tuehlke, register of deeds in and for the county
338 and State aforesaid, do hereby certify that I have duly compared the foregoing and annexed copy of a war. deed with the original record thereof as recorded in my said office on the 15th day of Dec., A. D. 1877, at 2 o'clock p. m., in volume 43 of deeds, on page 636, and that the same is a correct transcript therefrom and of the whole thereof.

In testimony whereof I have hereunto set my hand and affixed the seal of my said office, at Appleton, this 2d day of September, A. D. 1880.

[SEAL.]

JULIUS TUEHLKE, *Register,*
By SAM. J. RYAN, *Dep.*

COMPLAINANT'S EXHIBIT No. 15. Fr. Bloodgood, Examiner, &c.

This indenture, made the 22d day of Aug., in the year of our Lord one thousand eight hundred and seventy-three, between Duke Porter, party of the first part, and David M. Kelly, Henry Ketchum, & George Hiles, all of the State of Wisconsin, parties of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of one dollars to him in hand paid by the said parties of the second part, the receipt whereof is hereby confessed and acknowledged, hath given, granted, bargained, sold, remised, released, aliened, conveyed, and confirmed, and by these presents doth give, grant, bargain, sell, remise, release, alien, convey, and confirm, unto
339 the said parties of the second part, their heirs and assigns, forever the right of way covered by the Green Bay & Lake Pepin railway, one hundred feet wide, and being fifty feet each side of the centre line of said road, and all the land lying on the north side of said railway line on the northeast quarter of the southeast quarter of section sixteen, town. twenty-one (21), range seven (7) west, in the county of Trempealeau and State of Wisconsin, supposed to contain about twenty acres of land, be the same more or less, together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining and all the estate, right, title, interest, claim, or demand whatsoever of the said parties of the first part, either in law or equity, either in possession or expectancy, of, in, and to the above-bargained premises, with the hereditaments and appurtenances:

To have and to hold the said premises as above described, with the hereditaments and appurtenances, unto the said parties of the second part and to their heirs and assigns forever; and the said Porter, for his heirs, executors, and administrators, doth covenant, grant, bargain, and agree to and with the said parties of the second part, their heirs and assigns, that at the time of ensealing and delivery of these presents they were well seized of the premises above described as of a good, sure, perfect, absolute, and indefeasible estate of inheritance in the law and fee-simple, and that the same are free and clear from all incumbrances whatever; and that the above-
340 bargained premises in the quiet and peaceable possession of the said parties of the second part, their heirs and assigns, against all and every person or persons lawfully claiming the whole or any part thereof he will forever warrant and defend.

In witness whereof the said party of the first part hath hereunto set his hand and seal the day and year first above written.

DUKE PORTER. [SEAL.]

Signed, sealed, and delivered in presence of—
SYVERT JOHNSON,
HENRY LAKE.

STATE OF WISCONSIN, } ss:
County of Trempealeau, }

Be it remembered that on the 22d day of August, A. D. 1873, personally came before me the above-named Duke Porter, to me known to be the person who executed the said deed, and acknowledged the same to be his free act and deed for the uses and purposes therein mentioned.

HENRY LAKE,
Justice of the Peace.

STATE OF WISCONSIN, } ss:
Trempealeau County, }

OFFICE OF THE REGISTER OF DEEDS.

I, John O. Melby, register of deeds in and for said county, do hereby certify that I have carefully compared the annexed
341 and foregoing copy of warranty deed with the records in my office, and that it is a true transcript thereof and of the whole thereof as the same remains of record in this office of register of deeds on page 43, volume 16, of deeds, and was recorded March 31, 1876, at 4 o'clock p. m.

Witness my hand and official seal, at Whitehall, this 5th day of August, 1880.

[SEAL.]

JOHN O. MELBY,
Register of Deeds.

COMPLAINANT'S EXHIBIT No. 16. Fr. Bloodgood, Examiner, &c.

This indenture, made the fifteenth day of February, in the year of our Lord one thousand eight hundred and seventy-five, between David M. Kelly, of Brown county, Wisconsin, party of the first part, and George Hiles, of Wood county, Wisconsin, party of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of one dollar to him in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, hath granted, bargained, sold, remised, released, and quitclaimed, and by these presents doth, grant, bargain, sell, remise, release, and quitclaim, unto the said party of the second part, his heirs and assigns, all the estate, right, title, claim, and de-
342 mand of the party of the first part, either at law or in equity, and as well in possession as expectancy, of, in, and to all the following-described tracts, pieces, and parcels of land situated, lying, and being in the county of Trempealeau & State of Wisconsin, and particularly described as follows, to wit:

The northwest quarter of the southeast quarter of section No. sixteen (16), in township No. twenty-one (21) N., of range No. seven (7) west, and so much of the northeast quarter of the southeast quarter of the section aforesaid as is bounded southwardly by a line drawn parallel with and distant fifty feet northwardly from the centre line of the existing main track of the Green Bay & Minnesota railroad, as constructed through the tracts last mentioned; also the following-described tracts in township No. twenty-one (21), of range No. nine

(9) west, to wit: The east half of the northeast quarter of section No. ten (10); the southwest quarter of the northeast quarter, the east half of the northwest quarter, and the west half of the southeast quarter of section No. fifteen (15); the southeast quarter of the northwest quarter of section No. twenty-eight (28); the southeast quarter of the southwest quarter and the southwest quarter of the southeast quarter of section No. twenty-nine (29); the west half of the northeast quarter, the northwest quarter of the southwest quarter, the north half of the northeast quarter of the southwest quarter, the southwest quarter of the northwest quarter, and all that part of the southeast quarter of the northwest quarter which lies on the east side of Trempealeau river, being about ten acres, the five tracts last aforesaid being in section No. thirty-two (32); together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining; to have and to hold the said premises as above described, with the hereditaments and appurtenances, unto the said party of the second part and to his heirs and assigns forever.

In witness whereof the said party of the first part hath hereunto set his hand and seal the day and year first above written.

DAVID M. KELLY. [SEAL.]

Signed, sealed, and delivered in presence of (range number changed from nine to seven in first description before signing)—

WM. H. NORRIS, JR.
T. B. CHYNOWETH.

343 STATE OF WISCONSIN, } ss:
County of Brown, }

Be it remembered that on the 15th day of February, A. D. 1875, personally came before me the above-named David M. Kelly, to me known to be the person who executed the said deed, and acknowledged the same to be his free act and deed for the uses and purposes therein mentioned.

L. J. BILLINGS,
Notary Public, Brown Co., Wis.

STATE OF WISCONSIN, } ss:
Trempealeau County, }

OFFICE OF THE REGISTER OF DEEDS.

I, John O. Melby, register of deeds in and for said county, do hereby certify that I have carefully compared the annexed and foregoing copy of quitclaim deed with the records in my office, and that it is a true transcript thereof and of the whole thereof as the same remains of record in this office of register of deeds on page 44, volume 16, of deeds, and was recorded March 31, 1876, at 4 p. m.

Witness my hand and official seal, at Whitehall, this 21 day of August, A. D. 1880.

JOHN O. MELBY,
Register of Deeds.

344 PLAINTIFF'S EXHIBIT No. 17. Fr. Bloodgood, Examiner.

This indenture, made the 30th day of October, in the year of our Lord one thousand eight hundred and seventy-seven, between Henry Ketchum & Martha A., his wife, of New London, Waupaca county, Wisconsin, parties of the first part, and David M. Kelly, of Green Bay, Brown county, Wisconsin, party of the second part, witnesseth:

That the said parties of the first part, for and in consideration of the sum of two thousand dollars to them in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, have given, granted, bargained, sold, remised, released, aliened, conveyed, and confirmed, and by these presents do give, grant, bargain, sell, remise, release, alien, convey, and confirm, unto the said party of the second part, his heirs and assigns, forever all those certain tracts, pieces, or parcels of land situated, lying, and being in the county of Trempealeau, State of Wisconsin, and particularly described as follows, to wit:

All the lands described in and conveyed or purporting to be conveyed in and by two certain deeds from David W. Wade and wife to said Henry Ketchum, bearing date December 27th, 1872, and recorded in the office of the register of deeds for said Trempealeau county on the 23d day of February, 1874, in vol. 13 of deeds, pages 305 and 306, and a part and parcel of the premises above mentioned and conveyed; all lots and tracts of land in Whitehall according to the recorded plat thereof and in Ketchum's addition to Whitehall according to a plat thereof not yet recorded; excepting and reserving, however, from this conveyance and the operation hereof all lots and tracts of land in Whitehall according to said recorded plat which have been heretofore sold and conveyed in fee by deed by said parties of the first part to other persons, which accepted lots and tracts, according to the best information now and here accessible to the parties hereto, are supposed and believed to be as follows: All lots in block No. one (1); all lots in block No. two (2) other than Nos. six (6) and seven (7); all lots in block three (3) other than Nos. one (1) and two (2); all lots in block four (4) other than Nos. one (1) and two (2); all lots in block (5); all lots in block six (6); all lots in block seven (7) other than Nos. two and four (2) and (4); all lots in block eight (8); all lots in block nine (9) other than Nos. one (1),
345 five (5), and seven (7); lots Nos. one (1), two (2), three (3), and five (5), in block ten (10); all lots in block eleven (11) other than No. four (4); lots Nos. one (1), five (5), and six (6), in block twelve (12); lots Nos. three (3) and four (4), in block sixteen (16); lot No. one (1), in block seventeen (17); lot No. four (4), in block No. eighteen (18); lots Nos. five (5) and six (6), in block nineteen (19); excepting and reserving, also, as aforesaid, a piece of land conveyed to one M. Golden for mill purposes; excepting and reserving, also, as aforesaid, a tract of land south of said block nineteen (19), between the quarter-section line in the south — said creek on the east Main street, produced southward to said quarter-section line as its western boundary, and on the north a strip of land extending south from said block nineteen, in width equal to seventy feet and the

ordinary width of a lot in said plat taken together, which last-bounded tract embraces the old Wade farm-house; also excepting and reserving, as aforesaid, a tract conveyed for church purposes, bounded north by said quarter-section line and east by said Main street, continued as produced south thereto, together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining and all the estate, right, title, interest, claim, and demand whatsoever of the said parties of the first part, either in law or equity, either in possession or expectancy, of, in, and to the above-bargained premises and their hereditaments and appurtenances; to have and to hold the said premises as above described, with the hereditaments and appurtenances, unto the said party of the second part and to his heirs and assigns forever; and the said Henry Ketchum, for himself and for his heirs, executors, and administrators, doth covenant, grant, bargain, and agree to and with the said party of the second part, his heirs and assigns, that at the time of the ensealment and delivery of these presents he is well seized of the premises above described as of a good, the sure, perfect, absolute, and indefeasible estate of inheritance in law in fee-simple, and that the same are free and clear of all
346 incumbrances whatever, except leases & contracts of divers lots and tracts; and the above-bargained premises in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against all and every person or persons lawfully claiming the whole or any part thereof he will forever warrant and defend.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

HENRY KETCHUM. [SEAL.]
MARTHA A. KETCHUM. [SEAL.]

Signed, sealed, and delivered in presence of—"between" to "eight" erased in red ink & *and* contract inserted before signing—

H. A. LIBBIE.
H. A. FARINACCI.

STATE OF WISCONSIN, } ss:
County of Waupaca, }

Be it remembered that on the 30th day of October, A. D. 1877, personally came before me the above-named Henry Ketchum & Martha A. Ketchum, to me known to be the persons who executed the foregoing deed, and acknowledged the same to be their free act and deed for the uses and purposes therein mentioned.

[SEAL.] H. A. LIBBY,
Notary Public, Wis.

347 STATE OF WISCONSIN, } ss:
Trempealeau County, }

OFFICE OF THE REGISTER OF DEEDS.

I, John O. Melby, register of deeds in and for said county, do hereby certify that I have carefully compared the annexed & fore-

going copy of warranty deed with the records in my office, and that it is a true transcript thereof and of the whole thereof as the same remains of record in this office of register of deeds on pages 119, 120, & 121, volume 19, of deeds, and was recorded November 6th, 1877, at 8 o'clock a. m.

Witness my hand and official seal, at Whitehall, this 7th day of August, A. D. 1880.

[SEAL.] JOHN O. MELBY,
Register of Deeds.

PLAINTIFF'S EXHIBIT No. 18. Fr. Bloodgood, Examiner, &c.

This indenture, made the 17th day of February, in the year of our Lord one thousand eight hundred and seventy-nine, between George Hiles and Mary Hiles, his wife, of the county of Wood and State of Wisconsin, of the first part, and the Arcadia Mineral Springs Company, of the county of Trempealeau and State of Wisconsin, of the second part, witnesseth:

That the said parties of the first part, for and in consideration of the sum of ten thousand ($10,000.00) dollars to them in hand
348 paid by the party of the second part, the receipt of which is hereby acknowledged, have granted, bargained, sold, and quitclaimed, and by these presents do grant, bargain, sell, convey, and quitclaim, unto the said party of the second part, its heirs and assigns, forever the undivided two-thirds of the following-described premises and real estate, lying and being in the county of Trempealeau and State of Wisconsin and known as being the N. W. ¼ of the N. E. ¼; the S. W. ¼ of the N. E. ¼ and the S. W. ¼ of the N. W. ¼; 33 acres of N. W. ¼ of the S. W. ¼; 14 acres of the N. E. ¼ of the S. W. ¼; 10 acres of the S. E. ¼ of the N. W. ¼, and 10 acres of the N. W. ¼ of the S. E. ¼; all in section 32, township 21, range 9 west; also the undivided two-thirds of lots 2, 3, and 4, in block 1; lot 4, in block 3; lots 1, 2, 3, 5, and 7, in block 4; lots 1, 2, 3, 4, 5, 6, 7, 8, in block 5; lots 1, 2, 3, 4, 5, 6, 7, in block 6; lots 2, 3, 4, 5, 6, 7, 8, in block 7; lots 5, 6, 7, in block 8, and lot 5, block 9; all in the village of Arcadia, original plat; also lots 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, in block 22, and lots 4, 5, and 6, block No. 23, in Hiles and Ketchum's first addition to Arcadia:

To have and to hold the premises above bargained and described, with the appurtenances, unto the said party of the second part, its heirs and assigns, forever; together with all and singular the hereditaments and appurtenances thereunto belonging or in any wise appertaining and all the estate, right, title, interest, and claim or demand whatsoever of the said parties of the first part, either in law or equity, of and to the above-bargained premises, with the hereditaments and appurtenances.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

349 GEO. HILES. [SEAL.]
MARY HILES. [SEAL.]

Signed, sealed, and delivered in presence of—
J. W. BLAISDELL.
E. BLAISDELL.

STATE OF WISCONSIN, } ss:
County of Trempealeau, }

Be it remembered that on the 17th day of February, A. D. 1879, personally came before me the above-named George Hiles and Mary Hiles, to me known to be the persons who executed the foregoing quitclaim deed, and acknowledged the execution thereof to be their free act and deed for the uses and purposes therein mentioned.

C. M. MERCER,
Justice of the Peace.

STATE OF WISCONSIN, } ss:
Trempealeau County, }

OFFICE OF THE REGISTER OF DEEDS.

I, John O. Melby, register of deeds in and for said county, do hereby certify that I have carefully compared the annexed copy of quitclaim deed with the records in my office, and that it is a true transcript thereof and of the whole thereof as the same remains of record in this office of register of deeds on page 210, volume 21, of deeds, and recorded February 19th, A. D. 1879, at 10 o'clock a. m.

350 Witness my hand and official seal, at Whitehall, this seventeenth day of November, A. D. 1880.

[SEAL.] JOHN O. MELBY,
Register of Deeds.

PLAINTIFF'S EXHIBIT No. 19. Fr. Bloodgood, Examiner, &c.

This indenture, made the 17th day of February, in the year of our Lord one thousand eight hundred and seventy-nine, between George Hiles and Mary Hiles, his wife, of the county of Wood and State of Wisconsin, of the first part, and the Arcadia Mineral Springs Company, of the county of Trempealeau and State of Wisconsin, of the second part, witnesseth:

That the said parties of the first part, for and in consideration of the sum of ten thousand ($10,000.00) dollars to them in hand paid by the party of the second part, the receipt of which is hereby acknowledged, have granted, bargained, sold, and quitclaimed, and by these presents do grant, bargain, sell, convey, and quitclaim, unto the said party of the second part, its heirs and assigns, forever, the undivided two-thirds of the following-described premises and real estate, lying and being in the county of Trempealeau and State of Wisconsin and known as being the right of way covered by the Green Bay & Lake Pepin Railroad, one hundred feet wide, and being fifty feet each side of the center line of railroad; and all the land lying on the north side of said railroad line on the N. E. ¼ of the S. E. ¼ of section 16, township 21, range 7 west, containing twenty acres more or less; also all of the N. W. ¼ of the S. E. ¼ of section 16, township 21,

range 7 west; to have and to hold the premises above bargained
351 and described, with the appurtenances, unto the said party of the second part, its heirs and assigns, forever, together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining, and all the estate, right, title, interest, claim, or demand whatsoever of the said parties of the first part, either in law or equity, of and to the above-bargained premises, with the hereditaments and appurtenances.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

GEO. HILES. [SEAL.]
MARY HILES. [SEAL.]

Signed, sealed, and delivered in the presence of—
J. W. BLAISDELL.
E. BLAISDELL.

STATE OF WISCONSIN, } ss:
County of Trempealeau, }

Be it remembered that on the 17th day of February, A. D. 1879, personally came before me the above-named George Hiles and Mary Hiles, to me known to be the persons who executed the foregoing quitclaim deed, and acknowledged the execution thereof to be their free act and deed for the uses and purposes therein mentioned.

C. M. MERCER,
Justice of the Peace.

352 STATE OF WISCONSIN, } ss:
Trempealeau County, }

OFFICE OF THE REGISTER OF DEEDS.

I, John O. Melby, register of deeds in and for said county, do hereby certify that I have carefully compared the annexed copy of quitclaim deed with the records in my office, and that it is a true transcript thereof and of the whole thereof as the same remains of record in this office of register of deeds, on page 208, volume 21, of deeds, and recorded February 19th, A. D. 1879, at 10 o'clock a. m.

Witness my hand and official seal, at Whitehall, this seventeenth day of November, A. D. 1880.

[SEAL.] JOHN O. MELBY,
Register of Deeds.

PLAINTIFF'S EXHIBIT No. 20. Fr. Bloodgood, Examiner, &c.

This indenture, made the 17th day of February, in the year of our Lord one thousand eight hundred and seventy-nine, between George Hiles and Mary Hiles, his wife, of the county of Wood and State of Wisconsin, of the first part, and the Arcadia Mineral Springs Company, of the county of Trempealeau and State of Wisconsin, of the second part, witnesseth:

That the said parties of the first part, for and in consideration of the sum of twelve thousand and five hundred (12,500) dollars to them in
353 hand paid by the party of the second part, the receipt of which is hereby acknowledged, have granted, bargained,

sold, and quitclaimed, and by these presents do grant, bargain, sell, convey, and quitclaim, unto the said party of the second part, its heirs and assigns, forever the following-described premises and real estate lying and being in the county of Trempealeau and State of Wisconsin, and known as being lot (8) eight, in block 23, the W. ½ of lot 10 and all of lot 11, in block 23, in Hiles & Ketchum's 1st addition to Arcadia; also the triangular piece lying west of lot 11 and between lot 11 and the depot; also lots Nos. 8, 11, 12, 14, 15, 16, 17, 18, 19, 20, and 21, in block 17, in Briggs' 2d addition to Arcadia; also lots 9, 10, 11, 12, 14, 15, 16, 17, and 18, in block twenty-one (21), in Briggs' 2d addition to Arcadia:

To have and to hold the premises above bargained and described, with the appurtenances, unto the said party of the second —, its heirs and assigns, forever, together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining, and all the estate, right, title, interest, claim, or demand whatsoever of the said parties of the first part, either in law or equity, of and to the above-bargained premises, with the hereditaments and appurtenances.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year above written.

GEO. HILES. [SEAL.]
MARY HILES. [SEAL.]

Signed, sealed, and delivered in presence of—
J. W. BLAISDELL.
E. BLAISDELL.

354 STATE OF WISCONSIN, } ss:
County of Trempealeau, }

Be it remembered that on the 17th day of February, A. D. 1879, personally came before me the above-named George Hiles and Mary Hiles, to me known to be the persons who executed the foregoing quitclaim deed, and acknowledged the execution thereof to be their free act and deed for the uses and purposes therein mentioned.

C. M. MERCER,
Justice of the Peace.

STATE OF WISCONSIN, } ss:
Trempealeau County, }

OFFICE OF THE REGISTER OF DEEDS.

I, John O. Melby, register of deeds in and for said county, do hereby certify that I have carefully compared the annexed copy of quitclaim deed with the records in my office, and that it is a true transcript thereof, and of the whole thereof, as the same remains of record in this office of register of deeds, on page 209, volume 21, of deeds, and recorded February 19th, A. D. 1879, at 10 o'clock a. m.

Witness my hand and official seal, at Whitehall, this seventeenth day of November, A. D. 1880.

[SEAL.] JOHN O. MELBY,
Register of Deeds.

355 PLAINTIFF'S EXHIBIT No. 21. Fr. Bloodgood, Exam'r, &c.

This indenture, made the 17th day of February, in the year of our Lord one thousand eight hundred and seventy-nine, between George Hiles and Mary Hiles, his wife, of the county of Wood and State of Wisconsin, of the first part, and the Arcadia Mineral Springs Company, of the county of Trempealeau and State of Wisconsin, of the second part, witnesseth:

That the said parties of the first part, for and in consideration of the sum of five thousand and six hundred ($5,600.00) dollars to them in hand paid by the party of the second part, the receipt of which is hereby acknowledged, have given, granted, bargained, sold, remised, released, aliened, and confirmed, and by these presents do give, grant, bargain, sell, remise, release, alien, and confirm, unto the said party of the second part, its heirs and assigns, forever the following-described premises and real estate, lying and being in the county of Trempealeau and State of Wisconsin, to wit:

The southwest — of the northeast ¼th of section fifteen (15), town. twenty-one (21), range nine (9) west, and the east half of the northwest ¼th of section fifteen (15), town. twenty-one (21), range (9) west; also the west half of the southeast ¼th of section fifteen, township twenty-one, range nine (9) west; also the east half of the northeast ¼th of section ten (10), town. twenty-one (21), range nine west, containing two hundred and eighty (280) acres, more or less, together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, and the issues and profits thereof, and all the estate, right, title, interest, claim, or demand whatsoever of the said parties of the first part, either in law or equity, of and to the above-bargained premises, with the hereditaments and appurtenances:

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To have and to hold the said premises above bargained and described, with the appurtenances, unto the said party of the second part, its heirs and assigns, forever; and the said George Hiles and Mary Hiles, for themselves and their heirs, executors, and administrators, do covenant, grant, bargain, and agree to and with the said party of the second part, its heirs and assigns, that at the time of ensealing and delivery of these presents they are well seized of the premises above conveyed as of good, sure, perfect, absolute, and indefeasible estate of inheritance in the law and fee-simple, and have good right, full power, and lawful authority to grant, bargain, sell, and convey the same in manner and form aforesaid, and the same is free and clear of all former and other grants, bargains, sales, liens, judgments, taxes, assessments, and incumbrances of what kind and nature soever; and the parties of the first part the above-bargained premises in the quiet and peaceful possession of the said party of the second part, its heirs and assigns, against all and every person or persons lawfully claiming or to claim the whole or any part thereof will warrant and forever defend.

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In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

GEO. HILES. [SEAL.]
MARY HILES. [SEAL.]

Signed, sealed, and delivered in presence of—
J. W. BLAISDELL.
E. BLAISDELL.

STATE OF WISCONSIN, } ss:
County of Trempealeau, }

Be it remembered that on the 17th day of February, A. D. 1879, personally came before me the above-named George Hiles and Mary Hiles, to me known to be the persons who executed the foregoing deed, and acknowledged the execution thereof to be their free act and deed for the uses and purposes therein mentioned.

C. M. MERCER,
Justice of the Peace.

STATE OF WISCONSIN, } ss:
Trempealeau County, }

OFFICE OF THE REGISTER OF DEEDS.

I, John O. Melby, register of deeds in and for said county, do hereby certify that I have carefully compared the annexed
358 copy of warranty deed with the records in my office, and that it is a true transcript thereof and of the whole thereof as the same remains of record in this office of register of deeds on page 206, volume 21, of deeds, and recorded Feburary 19th, A. D. 1879, at 10 o'clock a. m.

Witness my hand and official seal, at Whitehall, this seventeenth day of November, A. D. 1880.

[SEAL.] JOHN O. MELBY,
Register of Deeds.

PLAINTIFF'S EXHIBIT No. 22. Fr. Bloodgood, Examiner, &c.

This indenture, made the 17th day of February, in the year of our Lord one thousand eight hundred and seventy-nine, between George Hiles and Mary Hiles, his wife, of the county of Wood and State of Wisconsin, of the first part, and the Arcadia Mineral Springs Company, of the county of Trempealeau and State of Wisconsin, of the second part, witnesseth:

That the said parties of the first part, for and in consideration of the sum of thirty thousand ($30,000.00) dollars to them in hand paid by the party of the second part, the receipt of which is hereby acknowledged, have given, granted, bargained, sold, remised, released, aliened, and confirmed, and by these presents do give, grant, bargain, sell, remise, release, alien, and confirm, unto the said party of the second part, its heirs and assigns, forever the following-
359 described premises and real estate, lying and being in the county of Trempealeau and State of Wisconsin, to wit:

The southeast quarter of the southwest quarter and the southwest

quarter of the southeast quarter of section twenty-nine (29), township twenty-one (21), range nine (9) west, containing eighty (80) acres, more or less, according to Gov't survey, together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining and the reversion and reversions, remainder and remainders, and the issues and profits thereof and all the estate, right, title, interest, claim, or demand whatsoever of the said parties of the first part, either in law or equity, of and to the above-bargained premises, with the hereditaments and appurtenances:

To have and to hold the said premises above bargained and described, with the appurtenances, unto the said party of the second part, its heirs and assigns, forever; and the said George Hiles and Mary Hiles, for themselves and their heirs, executors, and administrators, do covenant, grant, bargain, and agree to and with the said party of the second part, its heirs and assigns, that at the
360 time of ensealing and delivery of these presents they are well seized of the premises above conveyed as of good, sure, perfect, absolute, and indefeasible estate of inheritance in the law and fee-simple, and have good right, full power, and lawful authority to grant, bargain, sell, and convey the same in manner and form aforesaid, and the same is free and clear of all former and other grants, bargains, sales, liens, judgments, taxes, assessments, and incumbrances of what kind and nature soever; and the parties of the first part the above-bargained premises in the quiet and peaceful possession of the said party of the second part, its heirs and assigns, against all and every person or persons lawfully claiming or to claim the whole or any part thereof will warrant and forever defend.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

GEO. HILES. [SEAL.]
MARY HILES. [SEAL.]

Signed, sealed, and delivered in presence of—
J. W. BLAISDELL.
E. BLAISDELL.

STATE OF WISCONSIN, } ss:
County of Trempealeau, }

Be it remembered that on the 17th day of February, A. D. 1879, personally came before me the above-named George Hiles
361 and Mary Hiles, to me known to be the persons who executed the foregoing deed, and acknowledged the execution thereof to be their free act and deed for the uses and purposes therein mentioned.

C. M. MERCER,
Justice of the Peace.

STATE OF WISCONSIN, } ss:
Trempealeau County, }

OFFICE OF THE REGISTER OF DEEDS.

I, John O. Melby, register of deeds in and for said county, do hereby certify that I have carefully compared the annexed copy of warranty deed with the records in my office, and that it is a true transcript thereof and of the whole thereof as the same remains of record in this office of register of deeds on page 207, volume 21, of deeds, and recorded February 19th, A. D. 1879, at 10 o'clock a. m.

Witness my hand and official seal, at Whitehall, this seventeenth day of November, A. D. 1880.

[SEAL.] JOHN O. MELBY,
Register of Deeds.

COMPLAINANT'S EXHIBIT No. 23. Fr. Bloodgood, Examiner, &c.

This indenture, made this thirty-first day of May, in the year of our Lord one thousand eight hundred and seventy-two, between Catherine Davy, of the town of Little Wolf, county of Waupaca
362 & State of Wisconsin, party of the first part, and David M. Kelly, of Green Bay, Wisconsin, party of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of eighty dollars to her in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, hath given, granted, bargained, sold, remised, released, aliened, conveyed, and confirmed, and by these presents doth give, grant, bargain, sell, remise, release, alien, convey, and confirm, unto the said party of the second part, his heirs and assigns, forever all of the land that is covered by the right of way of the Green Bay & Lake Pepin railway, being one hundred feet wide and being fifty feet each side of the centre line of said railway where it is now located across the southeast quarter of the northeast quarter of section twenty-one (21), in town. twenty-three (23), range (13) east, and all the land that lies south of the said railway line on the said southeast quarter of the northeast quarter of section twenty-one, town. and range aforesaid, in the county and State aforesaid, together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining and all the estate, right, title, interest, claim, or demand whatsoever of the said party of the first part, either in law or equity, either in possession or expectancy, of, in, and to the above-bargained premises and their hereditaments and appurtenances; to have and to hold the said premises as above described, with the hereditaments and appurtenances, unto the said party of the second part and to his heirs and assigns forever.

363 And the said Catherine Davy, for her heirs, executors, and administrators, doth covenant, grant, bargain, and agree to and with the said party of the second part, his heirs and assigns, that at the time of the ensealing and delivery of these presents she was well seized of the premises above described as of a good, sure, perfect,

absolute, and indefeasible estate of inheritance in the law, in fee-simple, and that the same are free and clear from all incumbrances whatever; and that the above-bargained premises in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against all and every person or persons lawfully claiming the whole or any part thereof she will forever warrant and defend.

In witness whereof the said party of the first part hath hereunto set her hand and seal the day and year first above written.

her
CATHERINE x DAVY. [SEAL.]
mark.

Signed, sealed, and delivered in presence of—
Z. H. FOX.
A. C. McDONELL.

STATE OF WISCONSIN, }
County of Waupaca, } ss:

Be it remembered that on the 31st day of May, A. D. 1872,
364 personally came before me the above-named Catherine Davy, to me known to be the person who executed the above deed, and acknowledged the same to be her free act and deed for the uses and purposes therein mentioned.

[NOTARY SEAL.] H. KETCHUM,
Notary Public.

Received for record at 8 o'clock a. m. April 4th, 1876.
OLE O. HOLE, *Register.*

STATE OF WISCONSIN, }
Waupaca County, } ss:

I, J. H. Woodworth, register of deeds in and for the county of Waupaca, State of Wisconsin, do hereby certify that I have compared the foregoing with the original record of a warranty deed and acknowledgment of same and certificate of record thereof from Catherine Davy to David M. Kelly, recorded in this office on the 4th day of April, A. D. 1876, at 8 o'clock a. m., in vol. 43 of deeds, page 267, and that it is a correct transcript therefrom and the whole thereof as the same remains in my office and custody.

In testimony whereof I have hereunto set my hand and affixed my official seal this 31st day of August, A. D. 1880.

[SEAL.] J. H. WOODWORTH,
Register of Deeds.

Pl'ff's Exhibit No. 24. See page 243.
364½ Plaintiff's Exhibit No. 24. Copied in testimony, page —.
FR. BLOODGOOD,
Examiner, &c.

365 DEFENDANTS' EXHIBIT "A."

Whereas Leander G. Merrill, of Merrillon, Wisconsin, did, under date of April 10th, 1872, execute his bond running to the Green

Bay & Lake Pepin Railway Company, now known as the Green Bay & Minnesota Railway Company, binding himself in the sum of one hundred thousand dollars ($100,000) to convey to said railway company, by good and sufficient warranty deeds, a strip of land one hundred (100) feet wide through all lands traversed by the road of said company owned by him on said date or to be thereafter acquired by him, and also agreed to subscribe and pay for fifty thousand dollars ($50,000) of the capital stock of said company at par value when the railway of said company crossed Black river at or near Mormon Riffle, in section 3, township 22, range 3, in Jackson county; and

Whereas, under date of April 10th, 1873, the said Merrill executed his bond for one hundred thousand dollars ($100,000) running to David M. Kelly, agreeing that when the railroad of the said company was so located and constructed as to cross Black river at or near Mormon Riffle, in section 3, township 22, range 3, in said county of Jackson, and so as to traverse the S. W. ¼ of the S. W. ¼ of section 23, township 23, range 4, in said county, to convey to the said Kelly one equal undivided one-half of lots 2, 3, and 5, section 3, township 22, range 3, and all one equal undivided one-half of all the water-power and boomage at, about, and above Mormon Riffle, on Black river, then owned or acquirable or to be thereafter acquired by the said Merrill and connected with or available in connection with the three lots named, or any or either of them; and also to convey to the said Kelly all of the S. W. ¼ of the S. W. ¼ of section 23, township 23, range 4, in said county; and whereas the said Merrill and his brother, B. H. Merrill, by contract dated August 10th, 1872, agreed to convey a strip of land to the said Kelly one hundred and fifty (150) feet wide on each side of the railway right of way, one hundred (100) feet wide, beginning at the west line of the S. W. ¼ of the S. W. ¼ of section 23, township 23, range 4 west, in said county, the said strip to be one thousand six hundred (1,600) feet long; whereas the said railroad of the said company has been constructed as provided in said bond and within the time specified and no portion of the right of way referred to has been conveyed to said company; and whereas a large portion of the par value of the said fifty thousand dollars ($50,000) is still unpaid; and whereas the said Merrill has not yet conveyed to the said Kelly the said lots or the said water-power and boomage or the said tract of land or the said strip of land on each side of the right of way of said company or any portion of the same; and whereas the said Merrill is desirous of effecting a settlement in full with the said company and the said Kelly; and whereas the said company and the said Kelly are desirous of having a full settlement:

Now, therefore, the said railroad company, by D. M. Kelly, general manager, and the said Kelly, by himself, hereby make to the said Merrill the following proposition:

If the said Merrill will convey to the said railroad company seventy-five thousand dollars ($75,000) of full-paid stock in Iowa Lumber Company, and will give the said company a satisfactory guar-

antee that the debts of the said lumber company do not exceed
366 $5,000; and if the said Merrill will convey to the said railroad company by good title a strip of land for right of way one hundred (100) feet wide through all lands traversed by the road of said company, which he held on April 10th, 1872, and which he may have acquired since said date, then the said railroad company will give the said Merrill a receipt in full for all and all manner of claims which the said company may now have against the said Merrill, and will issue to him $50,000 of full-paid stock; and if the said Merrill will convey by good title to said Kelly an undivided one-half interest in said lots 2, 3, and 5 and an equal undivided one-half interest in the said water-power and boomage and all of the said forty (40) acres of land and the said strip of land on each side of the right of way of the said company the said Kelly will release the said Merrill from all and all manner of present obligation on the part of the said Merrill to the said Kelly. It is a part of this proposition that in the conveying by the said Merrill to the said Kelly of the S. W. ¼ of the S. W. ¼ of section 23, township 23, range 4, in said county of Jackson, *that* a few lots of the said forty have been sold to certain parties, and that the said Kelly will accept said forty subject to any such sale which may have been made, and the said Merrill to pay the said Kelly all and all manner of benefits which he may have up to the present time received by reason of such sales, and the said Kelly to have the right to collect any deferred payments which may now be due or which may hereafter become due by reason of such sale of lots in said forty.

The proposition herein made by the said railroad company and the proposition herein made by the said Kelly for himself are each dependent upon and a part of the other proposition.

In the event of the acceptance by the said Merrill of the proposition herein made by the said railroad company and by the said Kelly for himself it is understood that receipts in full shall be given as follows:

From the said railroad company to the said Merrill; from the said Kelly to said Merrill and to B. H. Merrill; from the said Merrill to the said railroad company; from the said B. H. Merrill to the said railroad company, and from Merrill and Loomis to the said railroad company.

GREEN BAY & MINNESOTA
RAILROAD COMPANY,
By —— ——, *General Manager.*

The above proposition on the part of the said company and the said Kelly to be accepted or rejected by the said Leander G. Merrill on or before the 15th inst., and if not accepted on or before said date it is understood that the same is withdrawn.

Green Bay, June 8th, 1877.

GREEN BAY & MINNESOTA
RAILROAD COMPANY,
By —— ——, *General Manager.*

In continuation of the foregoing proposition to the said Merrill from the said railroad company and to the said Merrill from the said Kelly and in modification of part of the same it is understood that nine lots, some of which are 44 by 125 and some 66 by 125, have been sold by the said Merrill from the said forty, and
367 that also a warehouse lot, with warehouse thereon, has been sold by the said Merrill to Merrill & Loomis, and that the said Kelly, in case the proposition is accepted by the said Merrill, agrees to confirm such sales of such lot, and to hold the said Merrill harmless on account of such sales and on account of any payments which may have been received by him on account of such sales.

It is also understood that the said Merrill is to give to the said railroad company his written guarantee that the said Iowa Lumber Company was duly organized under the laws of the State of Iowa; that its capital stock is to the amount of but one hundred and forty thousand dollars ($140,000), all of which is full-paid, and that the stock which the said Merrill holds is a portion of the said $140,000 of stock and is full-paid, and that the company, in all respects, is lawfully organized and has a lawful existence.

It is also understood that in case the said proposition is accepted by the said Merrill *that* the said Merrill is to give to H. Ketchum & Co. a receipt in full of all demands.

It is also understood that the said Merrill, in compensation to the said Kelly for the said lots which have been sold from the said forty, is to give to said Kelly one equal undivided one-half interest in lots 1, 4, and 5, section 10, township 22, range 3 west, said lots containing about one hundred and five (105) acres, more or less.

It is also understood that whereas said Merrill has leased to one Perry the "Mormon Riffle House," so called, for one year from May 15th last for the sum of $200 the said Kelly, in the event of the acceptance of the said proposition by the said Merrill, will confirm the said lease to the said Perry, said Kelly to have one-half of the rent for the same.

It is also understood that in case of the acceptance of the said proposition made by the said railroad company to the said Merrill by the said Merrill the said Merrill and wife are to be provided, in January of each succeeding year, with a document entitling them free transportation over the lines operated by the said company during the year for which said document is issued.

GREEN BAY & MINNESOTA
RAILROAD COMPANY,
By —— ——, *General Manager.*

Endorsed: "Proposition by G. B. & M. R. R. and by D. M. Kelly to Leander G. Merrill, June 8th, 1877."

DEFENDANTS' EXHIBIT A (2).

This agreement, made the 23d day of July, A. D. 1870, between David M. Kelly, of Green Bay, Wisconsin, party of the first part, and the Green Bay & Lake Pepin Railway Company, existing under

and by virtue of the laws of the State of Wisconsin, having its principal office at Green Bay aforesaid, party of the second part, witnesseth:

Firstly. That the said party of the first part, in consideration of the covenants, promises, and agreements hereinafter contained on the part of the said party of the second part, doth covenant, promise, and agree to engage in the service of the party of the second part as its general agent and manager for all and singular the purposes hereinafter set forth, and well and truly, according to his best ability, to arrange and negotiate for the construction and completion of the railway of the party of the second part, and to use his utmost
368 skill, judgment, and endeavors to promote, secure, and effect the construction and completion of said railway to the Mississippi river at a reasonable, early date, it being understood and hereby declared and conceded that for the accomplishment of such result he necessarily and naturally depends upon the co-operation of the party of the second part and on the supply by it of the means and aid hereinafter provided.

Secondly. That the said party of the second part, in consideration of the premises, doth on its part covenant, promise, and agree with the said party of the first part to render and yield unto him at all times, in aid of the performance of this agreement on his part, all possible needed assistance and co-operation not inconsistent with other provisions hereof, and, in aid of his efforts to promote, secure, and effect the construction and completion of said railway, to hold at all times, subject to his disposal, and upon his order to issue or deliver as he shall direct, subject to the restrictions in that behalf hereinafter contained, all the bonds of said company to, but not more than, the amount of sixteen thousand dollars per mile, as well as all municipal aid heretofore voted or hereafter during the continuance of this agreement to be voted to said company, and all the authorized capital stock of said company not heretofore issued.

Further, it is mutually covenanted and agreed, by and between the parties hereto, that all the said bonds of the said company and all the municipal aid aforesaid and all the capital stock aforesaid not heretofore issued shall, so far as thereto necessary, be used and applied for and to the construction and completion of said railway; that the residue of such bonds and aid not so used or applied shall be and remain the property of the said company, free and clear of all manner of claim of the party of the first part, but that the residue of the said stock not so used and applied shall be, become, and remain the sole property of the party of the first part, and be delivered to him as such in full compensation of services in the fulfilment of this agreement; but, nevertheless, — said party of the first part shall succeed in effecting the completion of said railway from Fort Howard westward to New London he shall not be entitled to demand or receive, as compensation for services, any of said capital stock whatever. In case he shall effect the completion of said railway as aforesaid to or beyond New London the party of the second part shall and will issue and deliver to him, as compensation for services, upon such completion to New London, and from time to

time thereafter as thereto required, such amount or amounts of such stock as, taken together with the stock heretofore issued and with the stock which shall then have been issued in aid of the construction of said railway to any given point, will constitute such proportion of the entire authorized capital stock as the length of the completed railway measured to the same given point shall bear to the whole length of said railway considered as extending to the Mississippi river; it being the true intent and meaning of this agreement in all its parts that the capital stock aforesaid shall be issued no faster in proportion than said railway shall be constructed and completed.

Further, it is mutually covenanted and agreed that all disbursements to be made during the building of said railway shall be made through the proper officers of said company; which officers shall at all times keep and hold, subject to the inspection of the party of the first part, a correct record of all financial transactions with all proper vouchers therefor.

That for all the purposes of this agreement the terms "com-
369 plete," "completed," and "completion" shall, respectively be held and taken to mean such condition of said railway or of any given point thereof as may be otherwise described by the expression "graded, tied, and ironed, and with trains of cars other than construction trains running thereon."

That unless the party of the first part shall effect or procure such completion of said railway from Fort Howard to New London on or before the 1st day of January, 1871, this agreement shall on that day become null and void as to any obligation of the party of the second part to the party of the first part, except as hereinafter provided. In case of such completion as aforesaid to said New London on or before the day last aforesaid, then this agreement shall continue in full force and effect until the 1st day of January, 1876; on which last-mentioned day the same shall become null and void as and except as aforesaid, unless the party of the first part shall on or before the day last aforesaid have effected or procured such completion of said railway from Fort Howard to the Mississippi river; but it is provided that nothing hereinbefore contained shall be construed as relieving the said party of the second part from issuing and delivering to the party of the first part any and all capital stock which before such forfeiture of this agreement may have become due or deliverable to the party of the first part as compensation by virtue of any other provision of this agreement.

It is further covenanted and agreed by the party of the second part that if, notwithstanding faithful and diligent effort and endeavor on the part of the party of the first part to perform his agreement hereinafter contained, he shall fail to effect the completion within the time hereinafter limited of any part whatever of said railway the said party of the second part shall and will, whenever this agreement shall, by reason of such failure, cease and determine as aforesaid, pay to the party of the first part his actual cash expenditures incurred in his efforts and attempted services hereunder.

And, lastly, it is further covenanted and agreed by the said party of the second part that it, the party of the second part, shall not

nor will at any time during the continuance of this agreement make with any other person or persons whomsoever any contract or agreement whatsoever without the consent of the party of the first part thereunto in writing had and obtained.

In witness whereof said party of the first part has hereunto set his hand and seal on the day and year first above written, and the party of the second part hath caused these presents to be subscribed by its president and secretary and the corporate seal to be hereto affixed, pursuant to a vote of the board of directors of said company had and passed at a meeting therof holden on the 20th day of July, A. D. 1870.

(Signed) DAVID M. KELLY. [SEAL.]

[Corporate Seal.]

ANTON KLAUS, *President.*
J. WHITNEY, *Secretary.*

Signed, sealed, and delivered in presence of—
H. GIESELER.
C. RAHR.

370 Resolved, That the time in and by the agreement of July 23d, 1870, between David M. Kelly and the G. B. & L. P. Railway Company limited to the said Kelly for the procurement by him of the completion of said railway to New London be, and the same is hereby, at his request, extended to the first (1st) day of October, 1871, and that for and in respect of each and every five (5) miles of said railway measured from the eastern terminus thereof, on or near Fox river, fifty thousand ($50,000) dollars in and of the full-paid capital stock of said company, — value, be issued and delivered to said Kelly whenever and as fast as each such distance of five (5) miles shall have been duly graded, ready for the ties, and that the residue of such capital stock which may, by virtue of said agreement, as hereinbefore firstly named, become issuable to said Kelly and delivered to him at the rate and times originally provided in said agreement, and that the foregoing variations of said agreement be taken and deemed, to all intents and purposes, to have been made on the 23d day of July, 1870, to the exclusion of any conflicting provisions therein contained.

Resolved, That the foregoing variation of said agreement be endorsed upon the said original agreement on file and upon the duplicate thereof in the possession of the said Kelly, and executed by both parties thereto in the same manner as said original and duplicate are executed.

This amendment to the said original contract is made with the understanding that if the said Kelly shall not, on or before the 1st day of May, 1871, have made an arrangement or closed a negotiation for iron for eighteen (18) miles of the road, under and by reason of which arrangement or negotiation the said amount of iron shall

be actually delivered to the said company, then this amendment and the original contract to be null and void.

(Signed) DAVID M. KELLY. [SEAL.]

[Corporate Seal.]

ANTON KLAUS, *President.*
J. WHITNEY, *Secretary.*

Signed, sealed, and delivered in presence of—
JAMES S. FEATHERLY.
C. S. WHITT.

371 DEFENDANTS' EXHIBIT B. Fr. Bloodgood, Exam'r, &c.

This indenture, made the third day of June, in the year of our Lord one thousand eight hundred and seventy-six, between J. R. Sechler and Susan Sechler, his wife, of the village of Sechlerville, county of Jackson, and State of Wisconsin, parties of the first part, and David M. Kelly, agent, of the city of Green Bay, county of Brown, and State of Wisconsin, party of the second part, witnesseth:

That the said parties of the first part, for and in consideration of the sum of one dollar to them in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, has given, granted, bargained, sold, remised, released, aliened, conveyed, and confirmed, and by these presents does give, grant, bargain, sell, remise, release, alien, convey, and confirm, unto the said party of the second part, his heirs and assigns, forever *the* all that certain tract, piece, or parcel of land situate, lying, and being in the county of Jackson and State of Wisconsin, and particularly described as follows, to wit: The north half of the northwest quarter of the southeast quarter (N. ½ of N. W. ¼ of S. E. ¼) of section nineteen (19), town. twenty-two (22), range five (5), and all that part of the southwest quarter of the northeast quarter (S. W. ¼ of N. E. ¼) of section nineteen (19), town. twenty-two (22), range five (5), which lies south of the railroad track of the Green Bay & Minnesota Railroad Company, together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining, and all the estate, right, title, interest, claim, or

372 demand whatsoever of the said party of the first part, either in law or equity, either in possession or expectancy, of and to the above-bargained premises, with the hereditaments and appurtenances:

To have and to hold the said premises above described, with the hereditaments and appurtenances, unto the said part- of the second part and to his heirs and assigns forever; and the said J. R. Sechler, for himself, his heirs, executors, and administrators, does covenant, grant, bargain, and agree to and with the said party of the second part, his heirs and assigns, that at the time of ensealment and delivery of these presents he is well seized of the premises as above described as of a good, sure, perfect, absolute, and indefeasible estate of inheritance in the law and fee-simple, and that the same are free & clear from all incumbrances whatever; and the

above-bargained premises in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against all and every person or persons lawfully claiming or to claim the whole or any part thereof he will forever warrant — defend.

In witness whereof the said part- of the first part have hereunto set their hand- and seal- the day and year first above written.

373 J. R. SECHLER. [SEAL.]
SUSAN SECHLER. [SEAL.]

Signed, sealed, and delivered in presence of—
C. SECHLER.
E. W. MERRILL.

STATE OF WISCONSIN, } ss:
County of Jackson, }

Be it remembered that on the third day of June, A. D. 1876, personally came before me the above-named J. R. Sechler and Susan Sechler, his wife, to me known to be the persons who executed the foregoing deed, and acknowledged the same to be their free act and deed for the uses and purposes therein mentioned.

E. W. MERRILL,
Notary Public, Brown County, Wis.

Received for record at 8 o'clock a. m., June 14th, 1876.
GEO. H. PERKINS, *Register.*

STATE OF WISCONSIN, } ss:
County of Jackson, }

I, E. O. Gullord, register of deeds of the said county of Jackson, do hereby certify that I have carefully compared the annexed copy with the original deed now on record in this office, and that it is a correct transcript therefrom and of the whole thereof.

In testimony whereof I have hereunto set my hand officially and affixed the seal of said office, at Black River Falls, in said
374 county, this 9 day of October, A. D. 1880.

E. O. GULLORD,
Register of Deeds,
By G. M. PERRY, *Dep'ty.*

375 DEFENDANTS' EXHIBIT B (2).

This agreement, made the 5th day of June, 1871, between David M. Kelly, of Green Bay, Wisconsin, party of the first part, and the Green Bay & Lake Pepin Railway Company, a corporation existing under and by virtue of the laws of the State of Wisconsin, and having its principal office at Green Bay aforesaid, party of the second part, witnesseth:

Firstly. That the said party of the first part, in consideration of the covenants, promises, and agreements hereinafter contained on the part of the said party of the second part, doth covenant, promise, and agree well and truly, according to the best of his ability, to endeavor to build or secure the building of the railroad of the said

company from the point of beginning, near the Fox river, at Fort Howard, to the Mississippi river, and to exert and use his utmost skill, judgment, and endeavor to promote, secure, and effect the building and completion of said railroad within a reasonable time next hence ensuing at the following rate of progress—that is to say: To New London, Wisconsin, on or before January 1, 1872; to the Wisconsin river on or before January 1, 1873, and to the Mississippi river on or before January 1, 1876; it being expressly understood and hereby declared and conceded by the said party of the second part for the accomplishment of such result and every part thereof the party of the first part necessarily and materially relies upon the co-operation of the party of the second part and upon the prompt and faithful supply by it as hereinafter provided of all the means and aid in that behalf hereinafter mentioned, and that such co-operation and supply shall at all times be deemed a condition essential and precedent to such performance as aforesaid on the part of the party of the first part.

Second. That the said party of the second part, in consideration of the premises, doth on its part covenant, promise, and agree to and with the party of the first part to render and yield unto them at all times in aid of the performance of this agreement on his part all the possible assistance and co-operation not inconsistent with other provisions hereof; and in aid of his efforts to perform this agreement on his part and in payment for his fulfilment thereof, subject only to the provisions in that behalf hereinafter contained, to assign, transfer, set over, and deliver unto him or to his order and subject to his disposition and control the mortgage bonds of said company secured upon its road, franchises, and property to the amount of sixteen thousand dollars per mile, all municipal aid, whether of towns, cities, or villages, boroughs or counties, heretofore secured or which may be hereafter secured by said company or to which on or before the completion of said railroad it may become in any manner entitled, and all authorized capital stock of said company not heretofore issued or hereafter to be issued in exchange for such municipal aid as aforesaid.

Thirdly. It is mutually covenanted, promised, and agreed that said mortgage bonds, municipal aid, and stock shall not be expended or disposed of by the party of the first part faster than at the rates following, to wit: Said bonds shall not be expended or dis-
376 posed of faster than at the rate of sixteen thousand dollars per mile of completed railroad, or such municipal aid faster than at the rate or rates per mile or other proportion provided in or by the terms of the several proposition or propositions whereunder the same aid shall be or become receivable, or said stock faster than at the rate of forty thousand dollars per mile of completed railroad or faster than at the rate of ten thousand dollars per mile of mere road-bed or grade; such completion in all cases to be of and upon a continuous line tending westward from the point of beginning aforesaid.

Fourthly. The said party of the first part, in consideration of the premises, further covenants, promises, and agrees that upon

failure actually to complete said railroad or any part thereof at the time or times in that behalf hereinbefore mentioned he will return and redeliver to the party of the second part upon its demand all such mortgage bonds and stock theretofore by him received which shall not at the time of such failure have been actually expended or authorized to be expended by the foregoing provisions of this agreement, to the end that the same may become and remain thereafter the property of the party of the second part, free from any and all claim of the party of the first part.

It is further mutually agreed that, for all the purposes of this agreement, the terms "complete," "completed," "completion," "built" shall respectively be held and taken to mean such condition of said railroad, or any given part thereof, as may be otherwise described by the expression "graded, tied, ironed, and with trains of cars other than construction trains running thereon;" and the terms "grade" and "road-bed" shall be deemed and taken to mean a grade or road-bed suitably constructed and ready for the reception of ties and rails.

It is further covenanted, promised, and agreed by the party of the second part that if, notwithstanding faithful and diligent effort and endeavor on the part of the party of the first part to perform his agreement hereinbefore contained, he shall fail to effect the completion within the time in that behalf hereinbefore expressed or any part whatever of said railway the said party of the second part shall and will, whenever it shall seek to rescind this agreement on account of such failure, pay to the party of the first part its actual cash expenditures incurred in his efforts and attempted services hereunder.

And, further, that it, the said party of the second part, shall not nor will at any time during the continuance of this agreement make with any other person or persons whomsoever any contract or agreement whatsoever without the consent of the party of the first part first thereto in writing had and obtained.

In witness whereof the said party of the first part hath hereunto set his hand and seal the day and year first above written, and the party of the second part hath caused these presents to be subscribed by its president and secretary and the corporate seal to be hereto affixed, pursuant to a vote of the board of directors of said company had and passed at a meeting thereof duly held on the fifth day of June, 1871.

DAVID M. KELLY. [L. S.]
H. KETCHUM, *President.*
[L. S.] FRED. S. ELLIS, *Secretary.*

377 Signed, sealed, and delivered in presence of—
JESSE M. ST. CYR AND
C. H. COTTON.

Endorsed: David M. Kelly with G. B. *M.* L. P. R'way Co. Agreement.

Defendants' Exhibit C.

This agreement, made the 12th day of February, 1872, between David M. Kelly, of Green Bay, Wisconsin, party of the first part, and the Green Bay & Lake Pepin Railway Company, a corporation existing under and by virtue of the laws of the State of Wisconsin, and having its principal office at Green Bay aforesaid, party of the second part, witnesseth:

Firstly. That the said party of the first part, in consideration of the covenants, promises, and agreements hereinafter contained on the part of the said party of the second part, doth hereby release and surrender his contract with said company made on the 5th day of June, 1871, and doth hereby covenant, promise, and agree to account to the party of the second part, when thereto required, for and concerning all mortgage bonds of said company and all municipal aid bonds of every description by him heretofore from or through said company received, had, or obtained, and for and concerning the disposition and proceeds thereof, and to engage in the service of the said party of the second part for all and singular the purposes hereinafter set forth as its chief financial and construction agent, and to perform, during the continuance of this agreement, the duties usually performed by a superintendent or general manager of a railroad company in and about the construction and carrying business thereof, and as such agent, and in the performance of such duties as aforesaid, well and truly and to the best of his ability to assist in procuring local or municipal aid and in operating the railroad of said company as fast as the same shall be built; to take charge of and conduct, to the best of his ability and skill, the negotiation and disposition of the mortgage bonds of said company and of the municipal or local aid by it heretofore obtained and hereafter to be obtained, and will well and truly and according to the best of his ability labor and endeavor to build or secure the building of said railroad from its present western terminus, at New London, to the Mississippi river, and exert and use his utmost skill, judgment, and efforts to promote, secure, and effect the building and completion of said railroad within a reasonable time next hence ensuing, and at the following rate of progress, to wit, to the Wisconsin river on or before January 1, 1873, and to the Mississippi river on or before January 1, 1876, and in the meantime to endeavor to promote in all other respects the interests of the party of the second part; and that he will not, during the continuance of this agreement, actively engage in building any other railroad without the consent of the party of the second part first had and obtained.

It is expressly understood, and by the party of the second part hereby declared and conceded, that for the accomplishment of such results and every part thereof the party of the first part necessarily and materially relies upon the ready co-operation of the party of the second part and upon the prompt and faithful supply by it, as hereinafter provided, of all the means and aid in that behalf hereinafter mentioned, and upon the prompt and faithful performance

by it of all the covenants, promises, and agreements on its
378 part hereinafter contained; and that such co-operation, supply, and performance shall at all times be deemed a condition essential and precedent to performance by the party of the first part of any act or thing by him to be performed.

Secondly. That the said party of the second part, in consideration of the premises, doth on its part covenant, promise, and agree to and with said party of the first part to assume and pay all indebtedness and liabilities by him heretofore contracted or incurred in or about the construction and equipment of said railroad and all other business by him transacted for the party of the second part, and to save, bear, and keep him harmless and indemnified thereof and therefrom; to pay to him all his expenditures paid or incurred out of or with his private means in or about the service of said company and for his services rendered since the fifth day of June, 1871, and to the date hereof, as in the nature of salaries, at and after the rate of five thousand dollars per annum; and said party of the second part doth further covenant, promise, and agree and hereby declare that so much of the one million six hundred thousand dollars, par value, of the capital stock of said company apportionable to the forty miles of said railroad already completed by the party of the first part under his aforesaid contract of June 5, 1871, and his previous contract of July 23, 1870, as has not been issued or pledged in exchange for municipal aid or taken by private subscription or otherwise actually used in or about construction or equipment is, and to all intents and purposes shall be, deemed the actual and exclusive property of the party of the first part, and, so far as not yet issued and delivered, shall be issued and delivered unto him upon his demand without any further action of the board of directors in that behalf.

And the said party of the second part doth hereby further covenant, promise, and agree to and with said party of the first part to employ, and doth hereby employ, him to perform the duties and for all other the purposes aforesaid, and doth hereby concede and grant unto him full power and authority in the premises, and doth covenant, promise, and agree to yield and render unto him at all times, in aid of his efforts to perform this agreement on his part, all possible assistance and co-operation not inconsistent with other provisions hereof, and, subject to the provisions in that behalf hereinafter contained, to assign, transfer, set over, and deliver unto him or as he shall direct, and subject to his charge, disposition, and control, all the mortgage bonds of said company not yet expended or disposed of secured upon its road, franchises, and property to the amount of sixteen thousand dollars per mile, and all municipal aid, whether of towns, cities, villages, boroughs or counties, heretofore obtained or voted, so far as not already expended or disposed of, or which may be hereafter obtained or secured by said company, or to which, at or before the completion of said railroad, said company may become in any manner entitled, and all authorized capital stock not heretofore issued or hereinbefore mentioned or hereafter to be issued in exchange for such municipal aid as aforesaid, and to bear, take, discharge, and reimburse to him all his expenses by

him to be made or incurred in and about the business of that company and the performance of this agreement; and for his services to pay to him, in addition to the stock hereinafter mentioned, the yearly salary or sum of five thousand dollars; and, in further compensation for his services during the progress of construction of said railroad westward from New London, whenever and as soon as any section of five miles, continuous with said railroad as already
379 completed, shall be graded, to issue and deliver to the party of the first part, as and for his sole and absolute property, fifty thousand dollars of the capital stock of the said company, at par value; and, whenever and as soon as each such section of five miles continuous with said railroad as theretofore already ironed, shall be tied and ironed, to issue and deliver to the party of the first part, and as for his sole and absolute property, such further amount of such stock as, with the stock theretofore consumed, pledged, or appropriated by, for, or in subscriptions and the construction of such section, will make up the amount of two hundred thousand dollars of stock at par value.

Nothing in this agreement contained shall be construed as creating or defining any office of chief financial agent, superintendent, or general manager, it being, on the contrary, expressly understood and declared that all and singular the powers and authority hereby conferred upon the party of the first part are so conferred as incidental to and in aid of the principal design of this agreement—that is to say, the complete construction of said railroad.

Thirdly. It is mutually covenanted, promised, and agreed that said mortgage bonds, municipal aid, and stock shall not be expended or disposed of by the party of the first part faster than at the rates following, to wit: Said bonds not faster than at the rate of sixteen thousand dollars per mile of completed railroad, such municipal aid not faster than at the rate or rates per mile or other proportion provided in or by the terms of the several propositions whereunder the same aid shall be or become receivable, and said stock not faster than at the rate of forty thousand dollars per mile of completed railroad, nor faster than at the rate of ten thousand dollars per mile of mere road-bed or grade; such completion to be in all cases of and upon a continuous line tending westward from the present western terminus.

Fourthly. The said party of the first part, in consideration of the premises, further covenants, promises, and agrees that, upon his failure actually to complete said railroad or any part thereof at the time or times in that behalf hereinbefore mentioned, he will return and redeliver to the party of the second part, upon its demand, all such mortgage bonds, municipal aid bonds, and stock theretofore by him received which shall not at the time of such failure have been actually expended by the foregoing provisions of this agreement, except such amounts of such stock as may in the meantime have been received or earned and not yet been received by said party of the first part as and for his sole and absolute property as hereinbefore provided: Provided, nevertheless, That before making such demand the said party of the second part shall pay unto the

party of the first part all arrears of salary and expenses and issue and deliver unto him all arrears of stock which shall then be due unto him.

It is further mutually agreed that for all the purposes of this agreement the terms "complete," "completed," and "completion" and "built" shall, respectively, be held and taken to mean such condition of said railroad or any given portion thereof as may be otherwise described by the expression "graded, tied, and ironed," and the terms "grade" and "road-bed" shall be deemed and taken to mean a grade or road-bed suitably constructed and ready for the construction of ties and rails. It is further covenanted, promised, and agreed by the party of the first part that if, notwithstanding faithful and diligent effort and endeavor on his part to fulfil the foregoing agreement on his part, he shall fail to effect the completion within the time in that behalf hereinbefore expressed, or either portion of said railroad, the said party of the second part shall, after first paying, issuing, and delivering unto the party of the first part all arrears of salary, expenses, and stock then due to him and unpaid or undelivered, have full power and authority to declare this contract void, and thereupon proceed to complete the performance by such means and agents as it may choose, whereof the party of the first part may have failed.

It is further mutually covenanted, promised, and agreed that all disbursements to be made during the continued building of said railroad shall be made by said company, through its proper officers, which officers shall at all times keep and hold, subject to the inspection of the party of the first part, a correct record of all financial transactions, with all proper vouchers therefor, and all books, accounts, and papers of said company.

And, lastly, the said party of the second part doth further covenant, promise, and agree that it will not at any time during the continuance of this agreement make with any other person or persons any contract or agreement whatsoever without the consent of the party of the first part first thereto in writing had and obtained.

In witness whereof the party of the first part hath hereunto set his hand and seal the day and year first above written, and the party of the second part hath caused these presents to be subscribed by its president and secretary and the corporate seal to be hereunto affixed, pursuant to a vote of the board of directors of said company had and passed at a meeting thereof duly holden on the 12th day of February, A. D. 1872.

DAVID M. KELLY. [SEAL.]
H. KETCHUM, *President.* [SEAL.]
FRED S. ELLIS, *Secretary.* [SEAL.]

Signed, sealed, and delivered in presence of—
J. F. GOODING.
T. P. BINGHAM.

Endorsed: David M. Kelly "E," with G. P. & L. P. R'y Co. Agreement.

DEFENDANTS' EXHIBIT D.

Fol. 1. Supreme Court.

Place of trial, New York county.

EDWIN C. B. GARSIA, ALFRED C. GARSIA, ALPHONSE D. VALENTINE, DESIRE SOPERS, and CHARLES HARVARD
against
DAVID M. KELLY.

Edwin C. B. Garsia, Alfred C. Garsia, Alphonse D. Valentine, Desire Sopers, and Charles Harvard, plaintiffs, by Tracy and Tallmadge, their attorneys, complain against the defendant and state their cause of action as follows:

On and prior to October 23d, 1871, and thenceforward during the period in which the transactions hereinafter stated occurred, the plaintiffs were partners, doing business in the city of New York under the style of Garsia & Co. On or about the twenty-third day of October, 1871, the defendant applied to the plaintiffs to have
381 their said Edwin C. B. Garsia negotiate for the defendant, as his broker, the first-mortgage bonds of the Green Bay & Lake Pepin railway in Europe. The said defendant then stated to the plaintiffs that the Green Bay & Lake Pepin Railway Company was a corporation existing under the laws of the State of Wisconsin, authorized to construct a railway leading westerly from Green Bay, in the said State, to the Mississippi river, at that part of the same known as Lake Pepin; that the said corporation had its railway partly constructed, and that the defendant had a contract for its completion and was actually engaged in the performance of such contract; that the said company had made its mortgage for securing the issue of its bonds to the amount of three million two hundred thousand dollars, payable, with interest, in gold, which bonds, to the extent of six hundred and forty thousand dollars, had been already issued and sold in the city of New York, and that he, the defendant, was to be paid for his contract in the remaining two million five hundred and sixty thousand dollars of the same bonds; that he had received from the said Green Bay & Lake Pepin Railway Company a full power of attorney to negotiate and sell the said bonds, with a power of substitution, the object of which was to enable him to dispose of the bonds and thereby to obtain means to compensate him for his construction of the said railway under his contract, and that although the negotiation of the bonds would be in form from the said company it would in substance be for the defendant.

The plaintiffs further state that such statements of the defendant were true, and they state the same as facts, and they furthermore state that the defendant had a power of attorney from the said Green Bay & Lake Pepin Railway Company, of which the following is a copy:

"Know all men by these presents that the Green Bay & Lake Pepin Railway Company, a corporation existing under and by virtue of the laws of Wisconsin and having its principal office in the

city of Green Bay, in the county of Brown and State of Wisconsin, hath made, constituted, and appointed, and by these presents doth make, constitute, and appoint, David M. Kelly, of the city of Green Bay, in the county of Brown, State of Wisconsin, its true and lawful attorney for it and in its name, place, and stead to negotiate in the United States and in Europe or in either country or continent the first-mortgage bonds of said company, and, if by him in such case deemed necessary, to accept in part payment of such bonds railroad iron or rails of good quality, but at current market rates or prices, giving and granting unto its said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about said premises as fully, to all intents and purposes, as it might or could do if personally present, with full power of substitution and revocation, hereby ratifying all that its said attorney or his substitute shall lawfully do or cause to be done by virtue hereof.

In witness whereof the said company hath caused its corporate seal to be affixed and these presents to be subscribed by its president and secretary this 23d day of June, A. D. 1871, pursuant to a vote of the board of directors duly had on the 22d day of June, A. D. 1871.

[L. S.] HENRY KETCHUM, *President.*
FRED S. ELLIS, *Secretary.*"

382 The plaintiffs further state that on or about the same 23d day of October, 1871, the defendant made and entered into an agreement to and with the plaintiffs, by which it was provided that the plaintiff, Edwin C. B. Garsia, should undertake the negotiation in Europe of the said bonds, excepting a portion thereof amounting to six hundred and forty thousand dollars, being the residue of such bonds, amounting to two million five hundred and sixty thousand dollars; that he should have the power to negotiate a sale of them for the defendant at a price which would enable him to realize the net sum of sixty-two and one-half per cent. of their par value in gold, and that the plaintiffs should have for their brokerage and compensation all the price for which they should be negotiated exceeding such sixty-two and one-half per cent. of their par value; that the defendant should advance monies to the plaintiff for the expenses of the said Edwin C. B. Garcia, which monies were to be deducted from the amount so to be paid as brokerage compensation as aforesaid; that the said Edwin C. B. Garsia should negotiate the said bonds by virtue of the power of attorney aforesaid given by the Green Bay & Lake Pepin Railway Company to the defendant under a substitution by the defendant to constitute said Edwin C. B. Garsia the substituted attorney of the said company; that in pursuance of the said agreement the defendant afterwards and on or about the seventh day of November, 1871, made and executed to the plaintiff, Edwin C. B. Garsia, an instrument in writing of substitution of which the following is a copy:

"Know all men by these presents that I, David M. Kelly, of the city of Green Bay, Brown county, Wisconsin, by virtue of the power

and authority to me given in and by a certain letter of attorney of the Green Bay & Lake Pepin Railway Company of the State of Wisconsin, to me made and delivered on or about the 22d day of June, 1871, under and by virtue of a resolution of the board of directors of said company duly adopted on that day, giving and granting unto me full power and authority *and* on behalf of said company to negotiate in the United States or in Europe, or either, the first-mortgage bonds of said company, and if by me deemed necessary, to accept in part payment therefor railroad iron of good quality at current market rates or prices, with full power of substitution of attorney in my discretion, I do hereby substitute and appoint Edwin C. B. Garsia, of the city and State of New York, to do, perform, and execute every act and thing which I might or could do in, by, and under the same, as well for me, as being the true and lawful attorney and substitute of the said Green Bay & Lake Pepin Railway Company, hereby ratifying and confirming all that the said attorney and substitute hereby made and appointed shall do in the premises by virtue hereof and of the said letter of attorney.

In witness whereof I have hereunto set my hand and seal the 7th day of November, 1871.

DAVID M. KELLY. [SEAL.]

Sealed and delivered in presence of—

[L. S.] WILLIAM H. NORRIS, JR.,
Notary Public.

The plaintiffs further state that at or about the date of the said last mentioned and recited instrument the same and the above mentioned and recited power of attorney from the said Green Bay & Lake Pepin Railway Company, whereby the defendant delivered to the plaintiffs —, and that such delivery was made with the
383 knowledge and approbation of the said Green Bay & Lake Pepin Railway Company, and for the same purposes hereinbefore stated to enable the same to be negotiated for the benefit of the said defendant upon account of his contract aforesaid.

The plaintiffs further state that in further pursuance of the said agreement the said defendant at different times advanced to the plaintiffs various sums of money for defraying the expenses of the negotiation, amounting to several thousand dollars.

The plaintiffs further state that by the direction and at the request of the defendant, and in pursuance of the said agreement, the said Edwin C. B. Garcia left New York for Europe on or about the 11th day of November, 1871, and immediately commenced negotiations for the sale of the said bonds. After expending much labor and effort and money in order to effect the negotiation, on the seventh day of February, 1872, he completed a negotiation of the said bonds to Messrs. Kinnaird & Co., bankers, of London, of great wealth and responsibility, at the price of seventy-five dollars in gold bonds, and the said Kinnaird & Co. were ready and prepared to enter into a formal contract for the same with the said Green Bay & Lake Pepin Railway Company through the said Edwin C. B. Garsia as such sub-

stituted attorney as aforesaid, when the negotiation was entirely defeated by the defendant informing the said Edwin C. B. Garsia that he had concluded a sale in the city of New York of a portion of the said bonds so to be negotiated by the said Edwin C. B. Garsia as aforesaid, amounting to one million two hundred thousand dollars, to parties in America; and the plaintiffs state the fact that while the said Edwin C. B. Garsia's negotiations with Kinnaird & Co. were in progress as aforesaid, and before they had resulted in the agreement to purchase the same, the said defendant had, in the city of New York, so sold said bonds to the extent of one million two hundred thousand dollars; that such sale was made without the knowledge of the said Edwin C. B. Garsia and while he was in Europe and was actually negotiating the sale of the whole of the said bonds, and that he had actually completed in good faith a negotiation with the said Kinnaird & Co. under the said substituted power before he received any notice or had any knowledge of the sale of the said bonds by the defendant as aforesaid; and they further state that the said power of attorney had in no manner been revoked, vacated, or annulled at the time when the said Edwin C. B. Garsia completed the negotiation as aforesaid.

The plaintiffs further state that upon learning of the sale of said bonds by the defendant to the extent of one million two hundred thousand dollars as aforesaid the said Kinnaird & Co. refused to purchase the residue of the bonds for the reason that they were unwilling to make a purchase of such bonds unless they could receive the whole amount so negotiated as aforesaid.

The plaintiffs further state that the said Edwin C. B. Garsia had fully performed and complied with the agreement with the defendant on the part of the plaintiffs; that he had procured a purchaser for the said bonds at a price at which he was authorized to sell them, and which would afford the plaintiffs a compensation or brokerage commission of ten per cent. upon the amount of the said bonds, and that by means of the defendant's acts the sale fell through after it had been negotiated by the said Edwin C. B. Garsia, and after the minds of the defendant and the said Kinnaird & Co. had been brought together for the purchase by the agency of the plain-
384 tiff in manner aforesaid, and upon terms in conformity with the instructions and agreement and power given to the said Edwin C. B. Garsia.

The plaintiffs thereupon state, claim, and insist that they are entitled to demand and receive from the defendants the brokerage, commission, or compensation provided for in the said agreement less the amount advanced to them by the defendant in manner aforesaid, or that they are entitled to demand and receive from the defendant the reasonable value of their services and expenses in the business of the defendant in and about the negotiation aforesaid.

They thereupon demand judgment against the defendant for ninety-eight thousand dollars and their costs, or such other relief as may be proper in the premises.

TRACY & TALLMADGE,
Plaintiff's Attorneys, 128 *Broadway, New York.*

CITY AND COUNTY OF NEW YORK, *ss:*

Edwin C. B. Garsia, one of the above-named plaintiffs, being duly sworn, doth depose and say that the foregoing complaint is true of his own knowledge, except as to the matters therein stated upon information and belief, and that as to those matters he believes the same to be true.

EDWIN C. B. GARSIA.

Subscribed and sworn to before me this 17th day of March, A. D. 1873.

DAVID W. PRICE,
Notary Public, New York County.

Endorsed: N. Y. supreme court. Edwin C. B. Garsia and others against David M. Kelly. Copy complaint. Tracy & Tallmadge, plaintiff's atty's, 128 Broadway, N. Y.

DEFENDANTS' EXHIBIT E.

This indenture, made the 24th day of November, A. D. 1871, between Sally E. Munger, of the county of Outagamie and State of Wisconsin, party of the first part, and David M. Kelly, of the county of Brown, in said State, party of the second part, witnesseth:

That the said party of the first part, in consideration of the sum of one dollar to her in hand paid by the said party of the second part, receipt whereof is hereby acknowledged, and of the benefits anticipated to the said party of the first part from the performance of the condition hereinafter set forth, doth for herself, her heirs, executors, administrators, and assigns, covenant and agree that if the Green Bay & Lake Pepin Railway shall be ironed to the Seymour road, so called, in the town of Seymour and county first aforesaid, which runs on the line between sections Nos. thirty-two (32) and thirty-three (33), in said town, and if the depot or station-house of said railway in and for said town shall be located and built at and upon the tract of ground distant not to exceed more than forty rods from the Seymour road aforesaid, the said party of the first part, her heirs, executors, administrators, or assigns, shall and will, on demand of said Kelly, his heirs, executors, administrators, or assigns,

385 after said railway shall have been ironed as aforesaid and said depot or station-house shall have been located and built as aforesaid, grant and convey to the said Kelly, his executors, administrators or assigns, by deed in due form of law, with all usual covenants and warranty, all the following-described tract, piece or parcel of land situated, lying and being in the county of Outagamie aforesaid and particularly described as follows, to wit: All that part of the southeast quarter of the northeast quarter of section No. thirty-two, in township No. twenty-four, of range No. eighteen, which is bounded and described as follows: Commencing at the intersection of the north line of said forty-acre tract with the west line of a piece of said forty-acre tract heretofore sold to one J. C. Messenger, thence south at right angles to the north line aforesaid twenty rods; thence west at right angles forty

rods; thence north at right angles to the north line aforesaid; thence east along said north line to the place of beginning, containing five acres, more or less.

In witness whereof the said party of the first part hath set hereunto her hand and seal the day and year first above written.

SALLY E. MUNGER. [SEAL.]

Signed, sealed, and delivered in presence of—
W. J. AUSBORNE.
JOHN WHITNEY.

STATE OF WISCONSIN, } ss:
Outagamie County, }

On this 24th day of November, A. D. 1871, before me personally appeared Sally E. Munger, to me known to be the person described in and who executed the foregoing agreement, and acknowledged the same to be her free act and deed.

ALBERT ANDERSON,
Justice of the Peace.

Endorsed: Sally E. Munger to David M. Kelly. Contract to convey.

Letter dated January 7, 1879, Allan Quithams to D. M. Kelly, page 135 testimony.

No exhibit marked "G."

Defendants' Exhibit "H." Letter of Mr. Kelly, page 135 testimony.

No exhibit marked "I."

DEFENDANTS' EXHIBIT "J."

This indenture, made the 24th day of November, A. D. 1871, between Frederic Muhl and Doratha Muhl, his wife, of the county of Outagamie and State of Wisconsin, parties of the first part, and David M. Kelly, of the county of Brown, in said State, party of the second part, witnesseth:

That the said parties of the first part, in consideration of the sum of one dollar to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, and of the benefits anticipated to the said parties of the first part from the performance of the condition hereinafter set forth, do for themselves, their heirs, executors, administrators, and assigns, covenant and agree that if the Green Bay & Lake Pepin Railway shall be ironed to the Seymour road, so called, in the town of Seymour and county first aforesaid, which runs on the line between sections Nos. thirty-two (32)
386 and thirty-three (33), said town, and if the depot or station-house of said railway in and for said town shall be located and built at and upon a tract of ground distant not more than forty rods from the Seymour road aforesaid, the said parties of the first part, their heirs, executors, administrators, or assigns, shall and will,

on demand of the said Kelly, his heirs, executors, administrators, or assigns, after said railway shall have been ironed as aforesaid, and said depot or station-house shall have been located and built as aforesaid, grant and convey to the said Kelly, his executors, administrators, or assigns, by deed, in due form of law, with all usual covenants and warranty, all the following-described tracts, pieces, or parcels of land situated, lying, and being in the county of Outagamie aforesaid and particularly described as follows, to wit: All that part of the southwest quarter of the northwest quarter of section No. thirty-three, in township No. twenty-four, of range No. eighteen, which is bounded and described as follows: Commencing at the northeast corner of the tract last aforesaid, and running west on the north line thereof sixty-two and one-half rods; thence south at right angles thirteen rods; thence east at right angles sixty-two and a half rods; thence north at right angles thirteen rods to the place of beginning, containing five acres, more or less; also all that part of the southeast quarter of the northeast quarter of said section which lies within a strip of land one hundred feet in width, running through the forty-acre tract last aforesaid and other adjacent lands, and extending fifty feet of such width or each side of the centre line of the grade or road-bed of said railway as heretofore located and constructed.

In witness whereof the said parties of the first part have set hereunto their hands and seals the day and year first above written.

FREDERIC MUHL. [SEAL.]
DORATHA MUHL. [SEAL.]

Signed, sealed, and delivered in presence of—
JOHN WHITNEY.
W. J. AUSBOURNE.

STATE OF WISCONSIN, } ss:
Outagamie County, }

On this 24th day of November, A. D. 1871, before me personally appeared Frederic Muhl and Doratha Muhl, his wife, to me known to be the persons described in and who executed the foregoing agreement, and acknowledged the same to be their free act and deed.

ALBERT ANDERSON,
Justice of the Peace.

Endorsed: Frederic Muhl to David M. Kelly. Contract to convey.

DEFENDANTS' EXHIBIT K.

This indenture, made the 17th day of November, A. D. 1871, between Simeon W. Munger and Samantha L. Munger, his wife, of the county of Outagamie and State of Wisconsin, parties of the first part, and David M. Kelly, of the county of Brown, in said State, party of the second part, witnesseth:

That the said parties of the first part, in consideration of the sum of one dollar to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, and of the benefits

anticipated to the parties of the first part from the performance of the condition hereinafter set forth, do, for themselves, their heirs, executors, administrators, and assigns, covenant and agree that if the Green Bay & Lake Pepin railway shall be ironed to the Seymour road, so-called, in the town of Seymour and county aforesaid, which runs on the line between sections Nos. thirty-two (32) and thirty-three (33) in said town, and if the depot or station-house of said railway in and for said town shall be located and built at and upon a tract of ground distant not more than forty rods from the Seymour road aforesaid, the said parties of the first part, their heirs, executors, administrators, or assigns, shall and will, on demand of the said Kelly, his heirs, executors, administrators, or assigns, after said railway shall have been ironed as aforesaid, and said depot or station-house shall have been located and built as aforesaid, grant and convey to the said Kelly, his executors, administrators, or assigns, by deed, in due form of law, with all usual covenants and warranty, all the following-described tracts, pieces, or parcels of land situated, lying, and being in the county of Outagamie aforesaid and particularly described as follows, to-wit: All that part of the north half of the northeast quarter of section No. thirty-two (32), in township No. twenty-four (24), of range eighteen (18), which lies on the southwardly side of the northwardly side line of a strip of land one hundred feet in width, running through the eighty-acre tract aforesaid and other adjacent lands, extending fifty feet of such width on each side of the center line of the grade or road-bed of said railway as heretofore located and constructed, excepting and reserving, however, therefrom so much of said strip as was last spring contracted to John Whitney; also that part of the northeast quarter of the northwest quarter of section No. thirty-three, in the township and range aforesaid, which lies on the southwardly side of the southwardly side line of the strip of land, one hundred feet in width, running through the forty-acre tract last aforesaid and other adjacent lands, extending fifty feet of such width on each side of the center line of the grade or road-bed of said railway as heretofore located and constructed, which last-mentioned tract hereby described and to be conveyed contains five acres, more or less, excepting and reserving, however, from the tract last aforesaid so much thereof as was by the parties of the first part, on the 19th of October, 1870, conveyed to the Green Bay & Lake Pepin Railway Company.

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In witness whereof the said parties of the first part have set hereunto their hands and seals the day and year first above written.

SIMEON W. MUNGER. [SEAL.]
SAMANTHA L. MUNGER. [SEAL.]

Signed, sealed, and delivered in presence of—
G. A. RANDALL.
GEORGE W. WILLIS.

STATE OF WISCONSIN, } ss:
Outagamie County, }

On this 17th day of November, 1871, before me personally appeared Simeon W. Munger and Samantha L. Munger, his wife, to me known to be the persons described in and who executed the foregoing agreement, and acknowledged the same to be their free act and deed.

E. C. BUTTLES,
Justice of the Peace.

Endorsed: Simeon W. Munger *et ux.* to David M. Kelly. Contract to convey.

388 DEFENDANTS' EXHIBIT L.

GREEN BAY, *Nov.* 22, 1878.

Timothy Case, Esq., receiver G. B. & Minn. R. R. Co.

SIR: Referring to a conversation had with you a number of months ago and to a request then made by you of me, I now have to state that the railroad suits in which I and friends of mine are held as sureties are, so far as I am at present advised, as follows:

Sarah McVey *vs.* G. B. & Minn. R. R. Co.
R. C. and Esther J. Lyons *vs.* G. B. & Minn. R. R. Co., two cases.
Isaac R. Grover " "
Annie Riggs " "
Joseph Pettis " "

Also in the matter of unpaid costs in New London striker suits.

Also there is a suit in New York city courts, Garcia *vs.* Myself, in which the railroad company is the real party in interest. In this case the damages are laid at $90,000, but, without doubt, it could be settled for, not to exceed $5,000, and a short time before I left the service of the company I could have settled it for $500, but, not wishing to be blackmailed, I refused to pay a dollar.

The enclosed letter, just received, will show what the able attorney in New York, who has been retained in the case, thinks of the chances of the plaintiff to recover in the action. Please return said letter to me.

If, then, the G. B. & Minn. R. R. Co. or its friends will give me an ample bond to hold me harmless from the foregoing-described suits I will make, execute, and deliver to it a deed, free of expense, of all right of way and of all depot grounds now being used by it which is the property of myself and the title to which is in me.

Yours, &c.,
(Signed) D. M. KELLY.

DEFENDANTS' EXHIBIT M.

This indenture, made this 20th day of July, in the year of our Lord one thousand eight hundred and seventy-seven, between Leander G. Merrill and Nancy, his wife, of Jackson county, Wisconsin, parties of the first part, and David M. Kelly, of Brown county, in said State, witnesseth:

That the said parties of the first part, for and in consideration of

the sum of one dollar to them in hand paid by the party of the second part, the receipt whereof is hereby confessed and acknowledged, have given, granted, bargained, sold, remised, released, aliened, conveyed, and confirmed, and by these presents do give, grant, bargain, sell, remise, release, alien, convey, and confirm, unto the said party of the second part, his heirs and assigns, forever all the equal undivided one-half part or share of each of those certain tracts, pieces, or parcels of land, situate, lying, and being in the county of Jackson, State of Wisconsin, particularly described as follows, to wit:

Lots Nos. two (2), three (3), and five (5), of section No. three (3); lots Nos. one (1), four (4), and five (5), of section No. ten (10), and lots Nos. three (3) and five (5) and the south half of lot No. four (4), of section No. two (2), all in township No. twenty-two north,
389 of range No. three (3) west; also the one equal one undivided one-half part or share of all the water-power, boomage, and water privileges at, about, and above Mormon Riffle, in section three (3) aforesaid, now owned or acquirable and to be hereafter acquired by the said Leander G. Merrill and connected with or available in connection with the three tracts first aforesaid or any or either of them; excepting and reserving, however, of and from the premises hereinbefore described a tract of land heretofore conveyed to Mrs. E. Mead, bounded and described as follows: Commencing eight rods west of the west side of the highway running from Black River Falls to Neillsville, and fifty feet north of the center line of the Green Bay & Minnesota railroad track, on lot No. three (3), of said section (3); thence eight rods to said highway, thence north eight rods, thence west eight rods, thence south eight rods to the place of beginning, containing sixty-four square rods, more or less; also excepting and reserving as aforesaid one dwelling built by S. V. Perry and one built by one Hill since May last; also excepting and reserving as aforesaid all buildings and right of way of the Green Bay & Minnesota Railroad Company; together with all and singular the hereditaments and appurtenances thereunto belonging or in any wise appertaining, and all the estate, right, title, interest, claim, and demand whatsoever of the said parties of the first part, either in law or equity, either in possession or expectancy, of, in, and to the above-bargained premises and their hereditaments and appurtenances; to have and to hold the said premises as above described, with the hereditaments and appurtenances, unto the said party of the second part and to his heirs and assigns forever.

And the said Leander G. Merrill, for himself and for his heirs, executors, and administrators, doth covenant, grant, bargain, and agree to and with the said party of the second part, his heirs and assigns, *and* at the time of the ensealment and delivery of these presents he is well seized of the premises above described as of a good, sure, perfect, absolute, and indefeasible estate of inheritance in the law, in fee-simple, and that the same are free and clear of all incumbrances whatever; and that the above-bargained premises in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against all and every person or persons law-

fully claiming the whole or any part thereof he will forever warrant and defend.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

L. G. MERRILL. [SEAL.]
NANCY MERRILL. [SEAL.]

Signed, sealed, and delivered in presence of—
W. H. NORRIS, JR.
T. P. BINGHAM.

STATE OF WISCONSIN, } ss:
County of Brown, }

Be it remembered that on the 20th day of July, A. D. 1877, personally came before me the above-named Leander G. Merrill and Nancy Merrill, to me known to be the persons who executed the foregoing deed, and acknowledged the same to be their free act and deed for the uses and purposes therein mentioned.

[SEAL.] T. P. BINGHAM,
Notary Public, Brown County, Wis.

390 Endorsed: No. 15731 B. Warranty deed. Leander G. Merrill *et ux.* to David M. Kelly. Register's office, Jackson county. Recorded July 23d, 1877, at 9 o'clock a. m., in vol. 23 of deeds, at pages 519 and 520. Geo. Perkins, register.

DEFENDANTS' EXHIBIT N.

Warranty Deed.

This indenture, made the 2nd day of November, in the year of our Lord one thousand eight hundred and seventy-two, between Frank Hull and Rachel H., his wife, at the town of Little Wolf, county of Waupaca and State of Wisconsin, parties of the first part, and Henry Ketchum, of New London, and David M. Kelly, of Green Bay, Wisconsin, parties of the second part, witnesseth:

That the said parties of the first part, for and in consideration of the sum of four hundred dollars to them in hand paid by the parties of the second part, the receipt whereof is hereby confessed and acknowledged, hath given, granted, bargained, sold, remised, released, aliened, conveyed, and confirmed, and by these presents doth give, grant, bargain, sell, remise, release, alien, convey, and confirm, unto the said parties of the second part, their heirs and assigns, forever the following-described real estate, situated in the county of Waupaca and State of Wisconsin, to wit: It being a piece of land forty-one rods wide across the east side of the southeast quarter of the northwest quarter of section twenty-one (21), town. twenty-three (23), range thirteen (13) east, except a piece of land five rods wide in the southwest corner of said described land, commencing at the southwest corner of said described land and running to the west bank of the Little Wolf river; the piece intended to be reserved is supposed to contain about twenty-five square rods of ground; to-

gether with all and singular the hereditaments and appurtenances thereunto belonging or in any way appertaining and all the estate, right, title, interest, claim, or demand whatsoever of the said parties of the first part, either in law or equity, either in possession or expectancy, of, in, and to the above-bargained premises and their hereditaments and appurtenances; to have and to hold the said premises as above described, with the hereditaments and appurtenances, unto the said parties of the second part and to their heirs and assigns forever.

And the said Hull and wife, for themselves, their heirs, executors, and administrators, do*th* covenant, grant, bargain, and agree to and with the said parties of the second part, their heirs and assigns, that at the time of the ensealing and delivery of these presents they were well seized of the premises above described as of a good, sure, perfect, absolute, and indefeasible estate of inheritance in the law, in fee-simple, and that the same are free and clear from all incumbrances whatever; and that the above bargained premises in the quiet and peaceable possession of the said parties of the second part, their heirs and assigns, against all and every person or persons lawfully claiming the whole or any part thereof they will forever warrant and defend.

In witness whereof the said parties of the first part ha*th* hereunto set their hands and seals the day and year first above written.

FRANK HALL. [L. S.]
RACHEL HALL. [L. S.]

Signed, sealed, and delivered in presence of—
WALLACE HOLMES.
E. A. SCOTT.

391 STATE OF WISCONSIN, } *ss:*
County of Waupaca, }

Be it remembered that on the 2nd day of November, A. D. 1872, personally came before me the above-named Frank Hall and his wife, to me known to be the persons who executed the said deed, and acknowledged the same to be their free act and deed for the uses and purposes therein mentioned.

E. A. SCOTT,
Justice of the Peace.

Endorsed: Frank Hall and wife to Ketchum and Kelly. Warranty deed. Register's office, Waupaca, Wis.

Received for record the 4th day of April, A. D. 1876, at 8 o'clock a. m., and recorded in vol. 43 of deeds on page 268.

OLE O. HOLE.

COMPLAINANT'S EXHIBIT NO. 1 IN REBUTTAL.

Know all men by these presents that Sally E. Munger, of the town of Seymour, county of Outagamie and State of Wisconsin, being desirous of the construction of the Green Bay & Lake Pepin railway,

and in consideration of one dollar in hand paid by the Green Bay & Lake Pepin Railway Company, the receipt of which is hereby acknowledged, do- hereby covenant and agree to and with the said company to sell and to convey to the said company by a good and sufficient warranty deed, at any time within two years from the date of this instrument, upon the payment or tender to her by the said company — the sum of one dollar, all those certain premises, situated in the county of Outagamie and State of Wisconsin, described as follows, to wit: A strip of land one hundred feet in width along the line of their road as now located through the south half (½) of the northeast ¼ of section 32, town. 24, range 18 E., and five acres additional if depot is located within ¼ mile of said land.

Said company shall and may now, or at any time hereafter when they shall desire, enter upon said premises and construct said railway and do all and every act thereon which may be deemed necessary or for their interest to do in the construction thereof, without let or hinderance from the said Sally Munger or those claiming under her.

In witness whereof I have hereunto set my hand and seal, at the town of Seymour, this eighth day of September, A. D. 1870.

SALLY E. MUNGER. [L. S.]

In presence of—
SIMEON W. MUNGER.
W. J. ABRAMS.

STATE OF WISCONSIN, } ss:
County of Outagamie, }

Be it remembered that on the eighth day of September, A. D. 1870, personally came before me the within-named Sally E. Munger, of the town of Seymour, to me known to be the person who executed the within instrument, and acknowledged the same to be her free act and deed for the uses and purposes therein mentioned.

W. J. ABRAMS,
Notary Public.

Endorsed: Miss Salley E. Munger. Right of way and five acres of depot grounds.

392 COMPLAINANT'S EXHIBIT No. 2 IN REBUTTAL.

Know all men by these presents that W. D. Jordan and his wife, of the town of Bovina, county of Outagamie and State of Wisconsin, being desirous of the construction of the Green Bay & Lake Pepin railway, and in consideration of one dollar to them in hand paid by the Green Bay & Lake Pepin Railway Company, the receipt of which is hereby acknowledged, do hereby covenant and agree to and with the said company to sell and convey to the said company, by a good and sufficient warranty deed, at any time within two years from the date of this instrument, upon the payment or tender to them by the said company of the sum of one dollar, all these certain premises, situated in the county of Outagamie and State of

Wisconsin, described as follows, to wit: Commencing upon the west bank of Wolf river, 1,160 feet south of the north line of section 29, town. 23, range 16, and running thence, upon a straight line to a point upon the north and south quarter line of said section 29, 105 feet north of the north bank of Wolf river, upon said line; thence south 105 feet to said bank of Wolf river; thence up the north bank of said Wolf river 1,125 feet; thence north northeasterly in a straight line across the southeast point of said lot No. 6, and strike the west bank of the Wolf river in said lot; thence north upon the said west bank of Wolf river 120 feet to the place of beginning, containing about ten acres of land, more or less, according to the above bounds, located on said lot No. 6, of section 29, town. 23, range 16, town of Bovina: Provided, That the said railway is constructed through said grounds and said grounds are used for depot; if not so used then said grounds revert to W. D. Jordan.

Said company shall, and may now or at any time hereafter when they shall desire, enter upon said premises and construct said railway and do all and every act thereon which they may deem necessary or for their interest to do in the construction thereof, without let or hinderance from the said W. D. Jordan and Mary E. Jordan or those claiming under them.

In witness whereof — have hereunto set our hands and seals, at the town of Bovina, this fourteenth day of July, A. D. 1870.

WOODFORD D. JORDAN. [L. S.]
MARY E. JORDAN. [L. S.]

In presence of—
F. Z. CROSS.
FRANK A. MANNING.

STATE OF WISCONSIN, } ss:
County of Outagamie, }

Be it remembered that on the fourteenth day of July, A. D. 1870, personally came before me the within-named W. D. Jordan and Mary E. Jordan, his wife, of Bovina, to me known to be the persons who executed the within instrument, and acknowledged the same to be their free act and deed for the uses and purposes therein mentioned.

W. J. ABRAMS,
Notary Public, Wis.

COMPLAINANT'S EXHIBIT NO. 3 IN REBUTTAL.

See testimony, page 199.

393 COMPLAINANT'S EXHIBIT NO. 4 IN REBUTTAL.

Plat of Arcadia.

(Here follows diagram marked p. 394.)

COMPLAINANT'S EXHIBIT No. 5 IN REBUTTAL.

Plat of Whitehall.

(Here follows diagram marked p. 395.)

DEFENDANTS' EXHIBIT A IN REBUTTAL.

Green Bay & Minnesota Railroad Company.

Balance-Sheet Giving Statement of Financial Condition November 1st, 1877.

Resources:

Cost of road and equipment to Jan. 1st	$12,256,573 30	
Construction account since Jan. 1st	15,305 60	
Interest account to Jan. 1st	1,404,792 48	
Profit and loss	9,247 00	
Local aid	114,991 25	
Materials on hand	25,346 34	
Eastmoor reconstruction	33,026 46	
Various persons and R. R. Co.'s	20,478 29	
Agents and conductors	10,802 65	
Operating expenses	254,471 90	
Cash on hand	2,765 09	
		$14,147,800 36

Liabilities:

Capital stock	$7,944,300 00	
1st mortgage bonds	3,200,000 00	
2nd "	779,860 00	
Lackawanna Iron & Coal Co.	1,654,362 81	
Haskell & Barker Car Co.	14,554 12	
5-months' scrip	17,675 00	
Bills payable	12,090 89	
Pay-rolls	37,067 11	
Local aid	100,274 74	
Received for Eastmoor insurance	47,348 67	
Various persons & R. R. Co.	50,610 32	
Station agents and conductors	1,563 68	
Earnings acc.	288,093 02	
		$14,147,800 36

Endorsed: Green Bay & Minnesota R. R. Co. Balance-sheet giving statement of financial condition November 1st, 1877. Office.

396 DEFENDANTS' EXHIBIT B IN REBUTTAL.

Green Bay and Minnesota Railroad Company.

Statement of Gross Earnings and Operating Expenses for the Month of October, 1877.

Gross earnings:	
Freight	55,252 34
Car mileage	380 67
Passengers	8,289 28
Express	69 71
Mail	
Extra baggage	63 81
Other sources	184 50
Total gross earnings Oct., 1877	64,240 31
" " " 1876	45,194 76
Operating expenses:	
Renewals	1,778 98
Repairs of engines and tenders	692 37
" cars	3,184 00
" buildings	206 22
" bridges and culverts	346 26
" track	5,464 83
" machinery and tools	337 73
Fuel used by locomotives	4,459 50
Fuel and lights used in cars and at stations	291 95
Oil, waste, and tallow used	325 12
Station expenses	99 13
Stationery, blanks, and tickets	328 71
Engineers, firemen, and wipers	2,236 22
Trainmen	1,606 17
Agents and station service	2,139 71
General office salaries	758 64
Superintendence	374 99
Rents	425 00
Interest and exchange	403 68
Loss and damage	656 89
Legal salaries and expenses	250 00
Foreign agents and advertising	101 50
Insurance	148 00
Miscellaneous expenses	2,890 34
Rent of L. C. T. & P. R. R.	2,057 23
Terminal facilities	1,377 15
Flour burned at Eastmoor in May	9,280 00
Total operating expenses Oct., 1877	41,920 32
" " Oct., 1875	28,397 69

Endorsed: Green Bay & Minnesota railroad. Statement of gross earnings and operating expenses for the month of October, 1877.

Trainmen	1,358 85
Agents and station service	2,479 57
General office salaries	707 64
Superintendence	374 99
Rents	
Interest and exchange	666 07
Loss and damage	212 53
Legal salaries and expenses	250 00
Foreign agents and advertising	89 40
Insurance	30 00
Miscellaneous expenses	1,042 36
Rent of L. C. T. & P. R. R.	2,201 98
Terminal facilities	2,291 26
Personal injuries	2 00
Total operating expenses Nov., 1877	$28,970 14
" " Nov., 1866	31,034 94

Endorsed: Green Bay & Minnesota railroad. Statement of gross earnings and operating expenses for the month of Nov., 1877.

DEFENDANTS' EXHIBIT F IN REBUTTAL.

Green Bay & Minnesota Railrord Company.

Schedule of Items Charged to Construction Account since Jan. 1st, 1877.

	Total.	Ch'g'd in Dec.
Miscellaneous expenses	176 91	
Right of way	3,789 33	42 35
Depot grounds	4,173 30	
Station-houses	267 54	6 75
Round houses	67 26	
Water stations	125 00	
Grade	4,019 64	3,030 00
Bridges	466 47	31 97
Turn-tables	13 50	
Office and station furniture	50 00	
Engineering	1,394 90	153 25
Fencing	3,302 09	669 75
Track scales	1,360 85	152 60
Eastmoor protection pier	163 98	
Ties	21 50	
	19,392 27	4,086 67

Endorsed: Green Bay & Minnesota R. R. Co. Schedule of items charged to the construction and equipment since Jan. 1st, 1877. Dec. 1st, 1877.

400 *Deposition of John I. Blair on Behalf of the Complainant.*

The deposition of John I. Blair, a witness on the part of the complainant, taken by and before me, the undersigned, Rufus K. Trevor, the commissioner named in the annexed commission, issued out of and under the seal of the circuit court of the United States for the eastern district of Wisconsin, at my office, Nos. 41 and 43 Wall street, New York city, on the second day of March, A. D. 1881, between the hours of 10 a. m. and 4 p. m., upon the annexed interrogatories and cross-interrogatories.

First. To the first direct interrogatory he saith:

My name is John I. Blair; my business is banking, manufacturing railroad iron, investing, and building railroads and attending to other private business; my age is upwards of seventy years, and I reside at Blairstown, New Jersey.

Second. I am acquainted with Timothy Case, and have known him from twelve to fifteen years; perhaps longer. I am also acquainted with David M. Kelly since the fall of 1871; George Hiles and Henry Ketchum, since about the year 1872. The Arcadia Mineral Spring Company am not acquainted with, but know where the springs are located.

Third. I think I first became acquainted with David M. Kelly in the fall of 1871, in New York city, and more particularly about the 26th of January, 1872, when he closed a contract for about six thousand two hundred tons of rails; after that time I saw him frequently.

Int. 4th. What was David M. Kelly's business at that time, and for what purpose did he visit New York city?

Ans. He said he was financial agent of the Green Bay & Lake Pepin Railroad Company, and he came to New York for the purpose of negotiating for the sale of the mortgage bonds and stocks of the said company and for the purpose of buying iron rails for that company. Mr. Samuel Marsh, who was a director of the Lackawanna Iron & Coal Company and an uncle of Mr. Kelly, introduced and recommended Mr. Kelly to me as the financial agent of the Green Bay and Lake Pepin Railroad Company, now the Green Bay & Minnesota Railroad Company.

Int. 5th. Did David M. Kelly seek to raise money, through you or from you, to aid him in constructing the Green Bay & Minnesota railroad?

Ans. He did; and he represented that they had already constructed and completed forty miles of said railroad, and that the same was in operation and paid for.

Int. 6th. What, if anything, did David M. Kelly, in any such conversation with you or at any time, say in relation to the Green Bay & Minnesota Railroad Company being the owner of a large number of village lots along the line of said railroad? State the whole of such conversation, as far as you recollect it.

Ans. I went over the line of the Green Bay railroad with Mr. Kelly while it was under construction, and we talked over the advantage of having land donated to the company for stations and

town sites, and, where he could not get sufficient donated, to buy more for that purpose. I stated that I had done it on all the roads that I had constructed and found it very profitable. He told
401 me he was doing that and was getting all the land donated he could for the benefit of the road and was getting other lands outside for the benefit of the road. As we went along the road he pointed out, at a number of places, land that he had secured for depots, town sites, and stations, and especially forty acres of land at Arcadia, which he said he had got donated or it was agreed to be donated, and he said that at that point he thought it would be desirable to buy additional land of the same party who had given the other, as it promised to be valuable as a growing town on account of the mineral springs, and I recommended him to do so. He pointed out to me a number of stations along the line of the road—lands which he told me had been donated for depot and station purposes, village lots, and sites. He said all these lands donated for village lots and sites were to be for the benefit of the company.

Int. 7th. Did David M. Kelly, in any such conversation with you or at any time, say that the sale of such village lots would prove a large source of income to the said railroad company?

Ans. He said and agreed with me that the lands would be a large source of income to the company.

Cross-examination:

I cannot state how many times I saw Mr. Kelly in the years 1871 and 1872. I don't remember that I ever saw him in 1870. I saw him during the year 1871 in New York city, and more particularly thereafter, and in the year 1872 at New York city, at Blairstown and at Belvedere, New Jersey, and along the line of the road.

2nd Cross-int. Was the said D. M. Kelly, during said years or either of them, engaged in constructing a line of railroad, or any part of it, now being operated by the complainant in above-entitled cause?

Ans. He was.

3d Cross-int. If you answer the 5th direct interrogatory that D. M. Kelly did seek to raise money from you or through you to aid him in constructing said line of railroad, state whether you furnished him any money; and, if so, what amount and when and on what security or securities. Give an itemized and detailed statement of the dates, amounts, and a detailed description of the securities received.

Ans. We did furnish him money. The Lackawanna Iron & Coal Company furnished, in cash and railroad iron, during the months of January and June, 1872, eight hundred and fifty-seven thousand one hundred and twenty dollars; of this one hundred and thirty-seven thousand two hundred and seventy-eight $\frac{61}{100}$ dollars was in cash. For this amount the Lackawanna Iron & Coal Company received bonds of the Green Bay & Lake Pepin Railroad Company of the face value of about one million two hundred thousand dollars, which was to be in full of the iron and cash. In the months of November and December of the same year the Lackawanna Iron & Coal Com-

pany loaned the Green Bay & Lake Pepin Railroad Company some two hundred and fifty-one thousand five hundred dollars, according to my memorandum. For this loan I think we had stock of that company pledged as collateral security, with the privilege to buy it thereafter in cancellation of the debt, if we chose to do so. I do not remember the amount of the stock that we then received. I am unable to give any further itemized or detailed statement of the dates and amounts or a further detailed description of the securities received.

4th Cross-int. Were you or either of you in any way interested as stockholder, officer, or otherwise in a corporation known as the Lackawanna Iron & Coal Company? If yea, did not you or
402 either of you, either individually or as members of the board of directors of said company, purchase stock and bonds of the Green Bay & Minnesota Railroad Company, either for yourselves or for the said coal company? If yea, were you, at the time of such purchase or receipt of said stocks or bonds, furnished by said Kelly with a copy of his contract for building said line of railway? If yea, attach with your answer to this interrogatory a copy of the said contract or the copy furnished to you.

Ans. I was a stockholder and director of the Lackawanna Iron & Coal Company. The Lackawanna Iron and Coal Company did purchase from the Green Bay & Lake Pepin Railroad Company both stocks and bonds. He did not furnish me or the company, to my knowledge, with a copy of the contract for building said line of railway.

5th Cross-int. If you answer the 3d direct interrogatory that you did meet the defendant, David M. Kelly, in the years 1870, 1871, and 1872, then please state the names of all persons who were present at such meetings; the objects and purposes of such meetings. State the same fully. Give the dates of each meeting and who was present at each meeting.

Ans. I am unable to state who was present at these meetings. The objects and purposes of these meetings were to carry through, by Mr. Kelly on the part of the company, the purchase of iron rails and the securing of the money loaned to the Green Bay Company, and on our part to inquire and ascertain as to the value of the property of the company and the sufficiency of the security and value of the property offered by them. I cannot give the dates of these meetings any further than I have given, nor can I say who was present at these meetings.

6th Cross-int. If you answer the 6th direct interrogatory by stating any conversation of D. M. Kelly with you as to the railroad company being the owner of a large number of village lots along the line of the railroad, then please state the date of said conversation, as near as you can; the place of the conversation, and each and every person present at the conversation; also state who commenced the conversation, what was the occasion of the conversation; and give the words of the conversation and the whole of the conversation from its commencement to its close.

Ans. One of these conversations occurred in 1872, when we went over the road together. I don't remember exactly the date. When we held the conversation I think we were alone; can't say who began the conversation, but suppose I did, as I went out to see the situation of the property. The occasion of the conversation was my desire to ascertain the extent and value of the property of the company and to see whether he was constructing to the best interests of the company. I cannot give the words of the conversation or the whole of the conversation from its commencement to its close. This same matter was a subject of conversation between us in New York city, before I went west along the line of the road, and I advised him to get donations of lands, right of way, village lots, and town sites for the benefit of the company, and he said that he had been securing donations of bonds from the counties and towns and of lands from individuals, and that these were to be for the benefit of the company. I cannot state who was present at this conversation or any of these conversations, or whether any person was present. I think, however, that Mr. Wm. E. Dodge was present at one or more of these conversations. I am unable to give the words of this conversation or these conversations more fully than I have
403 already done. On May 27–28, 1873, according to my memorandum, we went over the line of the railroad together, and I then had further conversation with Mr. Kelly about the village lots and lands of the company. He then pointed out along the line of the road the different stations and depots he had located and mentioned the lands donated, and at many different places along the line spoke of the number of acres of lands at the various places along the line which he said belonged to the company. I do not remember the amount or quantity at each place, except that at Arcadia. I remember that he said they had forty acres. This Arcadia was a somewhat prominent place along the road, and these lands, for a town, were considered of great value on account of the mineral springs. Mr. D. C. Blair and Samuel Blair were along on the trip, but I don't remember whether or not they heard the conversation with Mr. Kelly regarding these lands. There were a good many conversations on that trip, some of which were commenced by me and some by him.. The occasion of the conversation was my desire to ascertain and become fully informed as to the extent and value of the property and donations to the company. I am unable to give the words of these conversations more fully than I have stated.

Seventh. I have answered the last cross-interrogatory fully, and I have given the conversations and the whole of them as fully as I could, according to the best of my recollection and belief. I cannot give such conversations more fully.

8th Cross-int. If you answer the seventh direct interrogatory by testifying to any such conversation as is mentioned in such interrogatory, then please state when and where the said conversation took place and each and every person present at the conversation. Please be as accurate as you can as to the time and place of such conversation, and give the entire conversation as nearly as you can, word for word. State who commenced the conversation and what

was the occasion of the defendant Kelly making the statement, if he did, that the sale of such village lots would prove a large source of income to said railroad company.

Ans. There were several conversations about this matter, and these conversations were at the times before mentioned when we were going over the line of the road in 1872 and 1873, and at other times in New York city. I do not know who were present at either or any of these conversations. I do not know who commenced the conversations, but I suppose I did. The occasion of Kelly making the statement I supposed to be his desire to obtain the iron and money and to inform us as to their property, so that we would loan them money and sell them iron, and, further, to show us that he was getting all he could for the benefit of the property. My understanding was that he was to have no outside interest.

9th Cross-int. Was the said conversation of said Kelly, if any, before or after he had furnished you or either of you or the Lackawanna Iron and Coal Company with a copy of his contract for building the said line of railroad?

Ans. I never saw his contract and he never furnished me with a copy, but my understanding was that the bonds and donations would build and stock the road. I don't know whether he ever furnished a copy of his contract to the Lackawanna Iron and Coal Company.

10 Cross-int. Did you or either of you or the railroad company, to your knowledge, ever furnish the defendant, D. M. Kelly,
404 with any funds with which to purchase lands to be platted into village lots? If yea, give the date when furnished and the amount.

Ans. I never did; nor did the company, to my knowledge, advance to them money for the specific purpose of purchasing land to be laid out into village lots; but the Lackawanna Iron & Coal Company advanced the railroad company a large amount of money—something over a million dollars in cash, besides the amounts hereinbefore mentioned—and I supposed that whatever lands were needed or purchased and not donated would be paid for out of the funds of the company.

11th Cross-int. Did D. M. Kelly ever report to you or either of you or the railway company, to your knowledge, the purchase of any lands platted into village lots or to be so platted; if yea, when and the amount paid therefor? If yea, give copies of the dates and amounts so reported by him to you or either of you or to the railroad company.

Ans. He gave no further report than in the conversation which I have heretofore testified to. He did not state the amounts which had been paid for the lands.

Twelfth. I think he made reports about once a year concerning the earnings of the railroad company. I do not know of any other reports being made by Mr. Kelly. He was agent and general manager of the railroad company at a salary of five thousand dollars per year. I cannot say when we commenced to receive the reports, and we ceased receiving the reports some time previous to the ap-

pointment of the receiver. I do not remember that any of these reports contained a statement of any lands purchased for the purpose of being platted into village lots. I think they only contained the earnings and expenses of the road and perhaps the indebtedness of the road.

13th Cross-int. When and from whom did you first know that the title to any of the lands in this suit stood in the name of D. M. Kelly? Give the time of your first knowledge on that subject.

Ans. The first I knew of this was after the appointment of the receiver, and I learned it from the receiver. I cannot give the time more definitely.

14th Cross-int. Have you or either of you or the railroad company, to your knowledge, ever tendered or offered to tender to D. M. Kelly the amounts which he paid for village lots or for lands to be platted as such or for the lands in this suit? If yea, when and where and by whom was such tender made or offered to be made?

Ans. I don't know that Mr. Kelly ever paid any money for these lands, nor do I know that he was ever tendered or offered a tender of any amount which he had paid for village lots or for lands to be platted as such, nor did he make any claim or demand therefor.

Fifteenth. I had not seen these interrogatories nor cross-interrogatories, nor had the same or the contents of the same been stated to me prior to this examination. The commissioner has read to me each separate interrogatory and cross-interrogatory and taken down my answer to the same separately, and I first learned of the contents from the commissioner on this examination. I had before been informed by Mr. Case, the plaintiff, that a commission had been or was to issue to examine me in this suit.

16th Cross-int. Are you or either of you in any way connected with the Green Bay & Minnesota Railroad Co.? If yea, state
405 what your relations are to said company and how long you have held such relations with the company.

Ans. I think I was made a director some time before the receiver was appointed, and am still a director, but I have never attended any meetings of the board.

17th Cross-int. When did you first know of the commencement of this present suit, and who informed you? Was the same commenced on your advice or suggestion?

Ans. Timothy Case, the receiver of the railroad company, first informed me, about the time or a little before the suit was commenced. I think I advised the bringing of this suit. I think Mr. Case told me that it would be necessary to bring this action if Mr. Kelly would not convey the land and right of way; that he had been so advised by counsel, and I advised him to do so.

1st special cross-int. What is your present occupation?

Ans. I have fully answered that in my answer to the first direct interrogatory.

2nd special cross-int. Were you instrumental and the active party in commencing the suit of The Farmers' Loan & Trust Company against The Green Bay & Minnesota Railroad Company to foreclose the mortgages mentioned in the bill in that suit?

Ans. I was made the active party in commencing the suit mentioned by the instructions of a large majority of the bondholders. At that time the company was in default for over a million dollars on its coupons and owed the Lackawanna Iron & Coal Company for cash advanced over one million one hundred thousand dollars and for iron and other indebtedness over four hundred thousand dollars more, and other large indebtedness was reported as owing to the workmen and for suits against the company, — was hopelessly bankrupted, and, having lost confidence in the general manager, as one among the largest stockholders of the Lackawanna Iron & Coal Company and a director of the company, did what I could to secure the indebtedness due the company, and was in that way instrumental and an active party in commencing the suit to foreclose the mortgage.

(Objections to 3d, 4th, 5th, 6th, and 7th special cross-interrogatories sustained.)

8th special cross-int. Have you been engaged for several years in the business of constructing railroads? If yea, how many years, and what railroads have you built or aided in building?

Ans. I have, for more than thirty years; and I have built or aided in building the Delaware, Lackawanna & Western, the Warren, the Bloomsbury, Sussex, Blairstown, Kanga & Susquehanna railroads. In Iowa, Cedar Rapids and Missouri, Sioux City and Pacific, Maple River, Des Moines and Minn., Sacks City, Burlington, Cedar Rapids and Northern, Iowa Falls and Sioux City, Fremont, Elkhorn and Missouri Valley, Dakota Plug, Sioux City and Sioux Falls, Chicago and Pacific railroads, and some others.

Ninth. It has always been my custom, and in building nearly all the roads before mentioned I have procured or aided in procuring donations and made purchases of lands for village plats and lots along the line of the road, and these purchases and donations have always been made and received for the benefit of the compa-
406 nies, and the stockholders of the companies have always received their *pro rata* share according to the stock held by them. I have been largely interested as a stockholder in such a land company in Iowa. The stock of this land company was distributed and issued to the stockholders of the railroad company *pro rata* upon their stock in the railroad company, and every stockholder of the railroad company got his *pro rata* share of the stock of the land company. I did tell Mr. Kelly how I had managed these things for the benefit of the different railroad companies whose railroads I had constructed or aided in constructing, and told him how successful and profitable said operations had been for the companies, but I did not tell him that I had individually done these things or made any profit out of them, except such profits as I would make by reason of being a stockholder of the railroad company and in common with the other stockholders.

(Objection to 10th special cross-int. sustained.)

Eleventh. I have been a director of the railroad company, as before stated, but have held no other office of or employment by the company.

12th special cross-int. Are there any officers of the railway company in New York city? If yea, what officers, and how long have they resided in New York city?

Ans. There are Mr. E. F. Hatfield, the president and director; Mr. Moses Taylor and Mr. Wm. E. Dodge, directors; and I think Samuel Sloan is also a director. They are all old residents of New York city. I do not know how long they have resided here.

13th special cross-int. What books of the railway company are now kept in New York city, and how long have they been kept there?

Ans. I am informed that there are no books kept in New York city; that there were some books of the company sent on here for examination, which were returned to the company.

JOHN I. BLAIR.

Taken, subscribed, and sworn to before me this second day of March, A. D. 1881.

RUFUS K. TREVOR,
Commissioner.

Deposition of William E. Dodge on Behalf of the Complainant.

The deposition of William E. Dodge, a witness on the part of the complainant, taken by and before the undersigned, Rufus K. Trevor, the commissioner named in the annexed commission, issued out of and under the seal of the circuit court of the United States for the eastern district of Wisconsin, at my office, Nos. 41 and 43 Wall street, New York city, on the twenty-second day of March, A. D. 1881, between the hours of 10 a. m. and 4 p. m., upon the annexed interrogatories and cross-interrogatories.

First. My name is William E. Dodge; my age is seventy-five years; I am a merchant, and reside in the city of New York.

Second. I know Mr. Timothy Case, the receiver, and Mr. David M. Kelly. The other parties I do not know.

407 Third. I was first introduced to Mr. Kelly, I think, in the year 1871, but can't say positively whether it was 1870 or 1871, by my old, life-long, friend Samuel Marsh, his uncle, who was, with me, for many years a director in the New York & Erie Railroad Company and in the Delaware, Lackawanna Railroad Company and in the Lackawanna Iron & Coal Company. My first interview with him was in the Lackawanna Iron & Coal Company's office, and I met him frequently thereafter in New York city in 1871 and 1872.

Fourth. On introducing me Mr. Marsh stated that his nephew was engaged in constructing a very valuable railroad from Green Bay to the Mississippi river in Wisconsin, and that he had come to the city for the purpose of interesting parties here who would furnish the necessary capital to enable him to complete the road by the sale of stock and bonds. It was at that time or a few days after, I cannot

recollect, such a length of time has transpired, when he showed me the maps and profile of the road and expressed in very glowing terms the great value of this road as being the shortest of any road from the Mississippi river to Buffalo.

Fifth. His object appeared to be to interest the directors of the Lackawanna Iron & Coal Company, of which I was one, to take an interest in his road by subscribing for bonds and stock, in order, I supposed, through his uncle, to be enabled to purchase the iron necessary for his road.

Sixth. As one of the inducements to invest in his securities, he stated that the inhabitants along the line of the road were so anxious for its construction that he had been enabled to obtain the right of way at a very low cost to the road, in many instances given without any charge, and in addition he had secured, once in about ten miles, where there would be stations that would be likely to result in the building of villages, additional quantities of land which could be sold subsequently as village lots for the benefit of the company.

7th Int. Did David M. Kelly, in any such conversation with you or at any time, say that the sale of such village lots would prove a large source of income to the said railroad company?

Ans. This interrogatory I have mainly answered in the previous one. The precise nature of the conversations I cannot at this time recall, but the impression is very clear on my mind that the advantages to result to stockholders from the acquisition of these properties had its influence on myself and associates in the iron company in investing in his securities and in the large sales of iron we subsequently made to him on credit.

Cross-examination:

1st Cross-int. How many times during the years 1870, 1871, and 1872 did you see the defendant, D. M. Kelly, and where did you see him?

Ans. I cannot state specifically the number of times, but he was frequently in the city during those years in relation to the business of his road, and I often met him in the office of the Lackawanna Iron & Coal Company and in my own office, where he generally called when he was in the city to talk over the interests of the road.

2nd Cross-int. Was the said D. M. Kelly, during the said years or either of them, engaged in constructing a line of railroad, or any part of it, now being operated by the complainant in above-entitled cause?

Ans. He was; and had almost the exclusive control of it, so far as we were interested.

408 3rd Cross-int. If you answer the fifth direct interrogatory that D. M. Kelly did seek to raise money from you or through you to aid him in constructing said line of railroad, state whether you furnished him any money; and, if so, what amount and when and on what security or securities. Give an itemized and detailed statement of the dates, amounts, and a detailed description of the securities received.

Ans. I subscribed for bonds and stock. The amount directly purchased by myself was not large. I did not loan him money any other way.

Fourth. I am a large stockholder and have been a director in the Lackawanna Iron & Coal Company from its formation. Our iron company arranged with Mr. Kelly to sell him iron for portions of his road and took stock and bonds in part pay and part as collateral security. Subsequently we sold him a large quantity of iron, sufficient to complete his road, and, as I can remember at present without examining data, we took a large amount of his bonds and stocks as collateral security for the iron. I have an impression that he at one time showed us, at a meeting of our board, when we were negotiating for the iron, a copy of his contract for building the road, but I have no recollection of having one in my possession, nor no knowledge of it now.

5th Cross-int. If you answer the third direct interrogatory that you did meet the defendant, David M. Kelly, in the years 1870, 1871, and 1872, then please state the names of all persons who were present at such meetings; the objects and purposes of such meetings. State the same fully. Give the dates of each meeting and who was present at each meeting.

Ans. In reply to this interrogatory I can only say that in several instances he met with the executive committee of the Lackawanna Iron & Coal Company, with whom these negotiations for iron were made. I was a member of that committee, and Moses Taylor, John I. Blair, Percy R. Pine; and at that time I think Mr. Joseph H. Scranton was likewise a member, but there has been changes by death and removal, and I cannot remember distinctly the names of those who composed the committee at that time, nor can I remember the dates at which those meetings were held.

6th Cross-int. If you answer the 6th direct interrogatory by stating any conversation of D. M. Kelly with you as to the railroad company being the owner of a large number of village lots along the line of the railroad, then please state the date of said conversation, as near as you can; the place of the conversation and each and every person present at the conversation; also state who commenced the conversation, what was the occasion of the conversation; and give the words of the conversation and the whole of the conversation from its commencement to its close.

Ans. These conversations were had in New York city, but it's impossible for me at this distant time to give the dates or the exact words of the conversations. I had, after the road was completed—the exact date I do not remember—a ride with Mr. Kelly over the entire line of the road, when completed, from Green Bay to Winona and back, during which ride he expatiated largely on the future prospects of the road and on the cheapness in which he had obtained the right of way, and the great advantages which must result to the road from the acquisition of land acquired at the different
409 stations in excess of what would be needed for the use of the company, and the fact that he had obtained valuable donations to the company from several of the counties and towns through

which the road passed and from individuals, as an inducement for constructing the road. He certainly left the impression on my mind that the right of way had been obtained and settled over the entire line on which the issue of the bonds of the road were predicated. I suppose it was to impress upon my mind the great value of the road and the securities which he had passed to our iron company for the rails.

7th Cross-int. Have you answered fully the last preceding cross-interrogatory; if not, why not? If you have not given the words of the conversation and the whole of the conversation have you given the same and the whole of it according to your best recollection and belief? If not, please do so.

Ans. I have.

8th Cross-int. If you answer the 7th direct interrogatory by testifying to any such conversation as is mentioned in such interrogatory, then please state when and where the said conversation took place and each and every person present at the conversation. Please be as accurate as you can as to the time and place of such conversation, and give the entire conversation, as nearly as you can, word for word. State who commenced the conversation and what was the occasion of the defendant Kelly making the statement, if he did, that the sale of such village lots would prove a large source of income to said railroad company.

Ans. I can't answer more particularly than I have in the previous interrogatory.

9th Cross-int. Was the said conversation of said Kelly, if any, before or after he had furnished you or either of you or the Lackawanna Iron & Coal Company with a copy of his contract for building the said line of railroad?

Ans. My impression would be that they were both before and after.

10th Cross-int. Did you or either of you or the railroad company, to your knowledge, ever furnish the defendant, D. M. Kelly, with any funds with which to purchase lands to be platted into village lots? If yea, give the date when furnished and the amount.

Ans. I have no remembrance of any such definite payment, but my impression was and is that he used a portion of the large amounts of money we furnished him for that purpose.

11th Cross-int. Did D. M. Kelly ever report to you or either of you or the railway company, to your knowledge, the purchase of any lands platted into village lots or to be so platted; if yea, when, and the amount paid therefor? If yea, give copies of the dates and amounts so reported by him to you or either of you or to the railroad company.

Ans. I have no knowledge that he ever made any definite report of the kind. We had at that time entire confidence in Mr. Kelly and believed he would do honestly whatever was for the interest of the road.

Twelfth. I have no knowledge that he presented to our iron company any other statements than the gross amounts expended in the

construction of the road and, after it commenced running, monthly reports of its receipts and disbursements.

410 13th Cross-int. When and from whom did you first know that the title to any of the lands in this suit stood in the name of D. M. Kelly? Give the time of your first knowledge on that subject.

Ans. I was first informed by Mr. Case, the receiver, being in the city, that he was surprised to find that portions of the land obtained for the use of the company stood in his (Kelly's) individual name and that a considerable portion of the line of railroad was constructed over lands to which the company had no title. The exact date or the particulars he did not enter into, nor have I ever seen any particular statement.

14th Cross-int. Have you or either of you or the railroad company, to your knowledge, ever tendered or offered to tender to D. M. Kelly the amounts which he paid for village lots or for lands to be platted as such or for the lands in this suit? If yea, when and where and by whom was such tender made or offered to be made?

Ans. I have no knowledge that any such tender was ever made or any offer, because our company believed that the money we had furnished Mr. Kelly had been used in acquiring the title of such lands.

15th Cross-int. Have you or either of you seen or read the interrogatories or cross-interrogatories or either of them or had the same or the contents of the same stated to you prior to this examination? Has the commissioner read to you each separate interrogatory and cross-interrogatory and taken down your answer to the same separately? Have you in any way or by any means known the contents of either the direct or cross-interrogatories until the same was read to you by the commissioner before your answer was given to it?

Ans. I have not seen them or known of them in any way, except as they have been propounded to me by the commissioner.

Sixteenth. I am a stockholder and bondholder and director in the Green Bay Railroad Company and have been since soon after my first meeting with Mr. Kelly.

Seventeenth. I first learned of the commencement of this suit at about the time of its commencement from Mr. Case. I do not think it was commenced on my advice or suggestion.

W. E. DODGE.

Taken, subscribed, and sworn to before me this 22d day of March, A. D. 1881.

RUFUS K. TREVOR,
Commissioner.

411 And afterwards, to wit, on the tenth day of said term, to wit, on the 25th day of July, A. D. 1881—present, the Hon. John M. Harlan, associate justice of the Supreme Court of the United States, assigned to this circuit, presiding, and the Hon. Charles E. Dyer, district judge—the following proceedings were had, to wit:

Interlocutory Decree.

TIMOTHY CASE, Receiver of the Green Bay & Minnesota Railroad Company,
vs.
D. M. KELLY, HENRY KETCHUM, GEORGE HILES, & THE ARCADIA MINERAL SPRING CO. } In Equity.

This day came the parties, by their counsel, and, on consideration of the pleadings and proofs in this cause and the arguments of counsel thereon, it is ordered, adjudged, and decreed by the court that the complainant is entitled to recover from the defendants the title and possession of all such lands mentioned in the bill of complaint as are required by the railroad company for right of way, depot buildings, and other necessary railroad purposes, as described and limited in the charter of the company, and that the bill of complaint as to all other portions of the lands described therein be dismissed.

For the purpose of ascertaining what lands are required for right of way, depot grounds, and other railroad purposes, as above
412 stated, and also the extent and value of any improvements made by defendants, this cause is referred to Hon. James H. Howe, as special master of this court, who will take such additional proof as either party may offer upon reasonable notice, the evidence to close by the first day of October next, and the report of the master to be filed herein by the 20th day of October next. The master will accompany his report with such reasons as he may deem proper in support of the conclusions reached by him. For that purpose he may visit the premises and report the result of his personal examination.

September 28, 1881.—This day came James H. Howe, special master, and filed his report asking for additional time to make report.

And—same day—on reading and filing the report of James H. Howe, the special master appointed by order of this court in the above-entitled cause, dated July 25th, 1881, which report bears date Sept. 27, 1881, it is hereby ordered, on the application of said special master and upon the agreement of the parties mentioned in said report, that the times limited in said order of July 25th, 1881, be, and the same are hereby, extended as follows—that is to say:
413 The time for taking testimony under said order is extended to the 21st day of October next, and the time for the report of the special master is extended until the first day of November next.

Ordered, further, That said order of July 25th, 1881, be, and the same is, continued in force as hereby modified.

(Signed) CHAS. E. DYER, *Judge.*

October 20, 1881.—On reading and filing the report of James H. Howe, the special master appointed by order of this court made in the above-entitled cause and dated July 25th, 1881, which report bears date October 18th, 1881, it is hereby ordered, on the application of said special master, that the times limited in said order

of July 25th, 1881, as extended by order of this court, dated September 28th, 1881, be, and the same are, further extended as follows—that is to say: The adjournment to November 9th, 1881, as reported by said special master, is hereby approved, and the time for taking testimony under said order of July 25th as modified is hereby extended to said 9th day of November, said testimony to be closed before the 15th of November, 1881; and the time for the filing of the report of said special master is hereby extended to the first day of December next.

Ordered, further, That said order of July 25th, 1881, be, and the same is hereby, continued in force to said first day of December as hereby remodified.

414 November 26, 1881.—This day came James H. Howe, special master, and, on his application, it is ordered by the court that the time for him to take testimony under the order of reference and make his report be, and hereby is, continued until the further order of the court.

January 24, 1882.—This day came the receiver, by his counsel, and moved the court that James H. Howe, the special master, be required to file his report *instanter*, or, in default, to file the testimony taken by him under the reference, and, said motion having been argued by the counsel of the parties and submitted, on consideration thereof, it is ordered by the court that said motion be, and hereby is, overruled.

March 20, 1882.—This day came James H. Howe, the special master to whom reference was made, and filed his report, together with the testimony taken by him; which report is as follows:

Report of Special Master.

United States Circuit C't, Eastern Dist. of Wisconsin. In Equity.

TIMOTHY CASE, Receiver, *vs.* D. M. KELLY *et al.*, Def'ts.

To the hon. the circuit court for the eastern dist. of Wisconsin:

The undersigned, special master heretofore appointed in this
415 cause "for the purpose of ascertaining what lands are required for right of way, depot grounds, and other railroad purposes," as stated in the order, "and the value of improvements made by the defendants" upon such lands, hereby reports that he attended at Cook's Hotel, in the city of Green Bay, at the different days specifically stated in the reports of testimony taken accompanying this; that he was attended by counsel for the respective parties, and that on such days Timothy Case, the receiver; E. C. Case, H. G. Reed, and C. F. Hatch were examined as witnesses on behalf of the complainant, and David M. Kelly and George Hiles, defendants, and J. S. Alton were examined as witnesses on behalf of the defendants; that all said witnesses were duly sworn, their testimony reduced to writing by short-hand reporters employed for that purpose, and that their testimony so taken, signed by me, is filed herewith.

The undersigned further reports that in the execution of said order he personally examined the depot grounds claimed by said com-

plainant at the station of Merrillon and did not consider it necessary to examine the other stations, in reference to which testimony was offered and taken; that it was admitted by counsel for all parties that the station grounds and right of way at present occupied by the railroad company at the station of Black Creek were sufficient, and no further claim was made by complainant in reference thereto.

416 That the stations for which additional depot grounds and grounds for railroad purposes were claimed were Seymour, Manawa, Merrillon, Blair, Whitehall, and Arcadia.

That for the several stations of Manawa, Blair, Whitehall, and Arcadia the undersigned is of opinion that the present depot grounds enjoyed by said complainant are insufficient for the business of the company and its efficient and economical management; that at each of said stations, unless a different rule is required for special reasons stated, the depot grounds should have a length of fifteen hundred feet and a width of three hundred feet; that my reasons for this opinion are as follows: The grades and curvatures of the line of railroad described in the pleadings in this cause, and which will hereafter be called the compl't road, permit the successful employment of freight trains of twenty-five cars, which, with the engine, require a length of standing room of about 1,200 feet; that the economical and safe management of such a railroad requires at each of the above stations two side tracks, which should be of sufficient length to permit a full freight train to stand upon one of the side tracks while another train, freight or passenger, is passing upon the main track; that

417 a second side track is necessary in order that freight cars for the local business of the station may stand for purposes of loading or unloading without disturbance from passing trains; that fifteen hundred feet in length of side track is sufficient for those purposes and is necessary therefor; that a width of three hundred feet is required in order that the three tracks may have ample room and adequate facilities be given for station buildings, warehouses, lumber and cattle yards, water-tanks, fuel sheds, and other purposes; that a convenient arrangement of such grounds at such stations would be thus:

For main track, so located that 100 feet of depot grounds would be on one side of its centre and 200 feet upon the other, would require of width	10 feet.
Depot buildings and two platforms	40 "
For side tracks	10 "
For street to approach and other purposes	40 "
In all on one side	100 feet.
On the other side:	
Width of ground between end of ties of main track and second side track to give ample room for teams to reach cars on inside side	40 feet.
For second track	10 "
	150 "

This arrangement would leave depot grounds 150 feet wide by fifteen hundred feet long for cattle yards, lumber and wood yards, warehouses, and grain elevators, with side tracks as required,
418 the ground between the main track and the first side track described at either end of the freight and passenger depots furnishing ample accommodation for water-tanks and fuel sheds for the use of the engines operating the railroad.

The undersigned further reports that the present depot grounds at the station of Seymour, north of the right of way, are but about nine hundred feet in length by about two hundred and twenty-five feet in width; that additional grounds are needed in order to give the necessary length of side track and to meet the special needs of the compl't road at that point, as appears by the testimony of the complainant, Timothy Case, accompanying this report; that complainant should have a strip of land seventy-five feet in width along and parallel to the south line of the right of way and extending across blocks 78 and 79, as marked upon Defendant's Exhibit "A" and marked "reserved" upon Complainant's Exhibit "3," making the depot grounds about 400 feet in width.

The undersigned further reports that the present depot grounds and right of way at the station of Manawa are 208 feet in width and 1,364 feet in length; that for reasons before given said grounds are insufficient in both length and width for the business of
419 the Co.; that a tract of land about 100 feet in width & fifteen hundred feet in length parallel with the south line of said depot grounds & a further tract about 200 feet in width & one hundred & fifty feet in length on the east end of said grounds are required for that station.

The undersigned further reports that the station grounds and right of way at Whitehall station are fifteen hundred feet in length by 169 feet in width in the widest part; that at each end the width is but 100 feet; that the extreme width extends about 600 feet of the centre, decreasing gradually to the width of the right of way at either end. There is one side track north of the depot building connecting with the main track at each end, the depot building being between the main and side track-. The grounds are of insufficient width, and a tract of ground about 130 feet in width should be conveyed to the complainant road upon the south side of the depot grounds and parallel with it for its whole length.

The undersigned further reports that the station grounds and right of way at Blair station are situated upon a curve, the southern boundary line of which is about 1,400 feet in length and the northern line about 1,230 feet in length by a width of about 170
420 feet; that there is one side track already constructed on the north side of the depot, connecting with the main track at both ends; that the depot building lies between the main track and the side track mentioned; that said depot grounds are insufficient in width, and that said compl't road should have additional grounds at that station parallel for its whole length with the south line of said depot grounds and right of way and of the width of about 130 feet.

The undersigned further reports that the complainant road crosses at nearly a right angle the Chicago, St. Paul, Minneapolis and Omaha railroad at the station of Merrillon. Another railroad, known as the Neillsville Branch, and belonging to and operated by the last-named company, connects with it in the village of Merrillon, runs for a short distance nearly parallel with it, and extends to Neillsville.

The tracks of the complainant road and of the Omaha Company are connected west of the last-named line by two side tracks, one north and the other south of complainant road, forming complete "Y" tracks. North of the track of complainant road and east of the Omaha road a side track connects with the Neillsville Branch above described, forming a third connecting track with the Omaha road. A turn-table, the joint property of these two
421 companies and connected by tracks with both, is located between complainant road and the Neillsville Branch. Complainant road has right of way 100 feet in width, extending through the village of Merrillon. It has depot grounds west of the Omaha road, of irregular shape, 600 feet in length from the Omaha crossing, 200 feet in width, including right of way at the western end, and much wider at the eastern end. These depot grounds are correctly shown on compl't's map, marked Exhibit 1. There is a side track upon the right of way east of the Omaha Line and north of the main track of complainant road, connecting with the main track at each end. There is a freight depot upon the right of way of the two companies in the southeast angle made by the crossing, and a hotel and joint passenger depot upon the northwest angle of the same.

Loaded and empty freight cars desiring further transportation are exchanged between the companies at this station.

Neither Exhibit 1 of the complainant's testimony nor Exhibit D of the def'ts' testimony show correctly the existing system of tracks and connections north of the complainant's line and east of the Omaha Line upon the southwest quarter of the southwest
422 quarter of section 23, town. 20 N., of range 4 west. A dotted blue-pencil line made upon the map, Exhibit 1, while upon the ground, by a competent surveyor, under the direction of the undersigned, shows approximately the line of the Neillsville Branch. The other blue marks show approximately the location of buildings upon the premises described. The mark near the north line of the right of way and upon the side track of complainant road shows approximately the location of lumber yard.

It appears from the testimony filed herewith that it is the purpose of the compl't road to engage in the business of coal transportation, in connection with the said Omaha road, for the purpose of delivering coal received by compl't road at its eastern end on Fox river at Ft. Howard, brought thither by lake transportation to St. Paul and other towns in the Mississippi Valley, using the said Omaha Line for that purpose.

That small amounts of coal have already been so transported by said two railroads, the loaded coal-cars of compl't road being de-

livered to the other company for further transportation; that such employment of compl't's road cars upon the tracks of the other Co. has caused loss and inconvenience, which the first-named Co.
423 desires to avoid by the erection of coal sheds at this station in which coal can be stored, and, when required, be economically loaded upon cars of the other Co. for transportation to its ultimate destination; that two sheds upon which elevated tracks can be placed if desired, with coal "pockets" or "shutes" into which coal can be discharged by gravity, are required for that purpose.

Upon that testimony the undersigned is of the opinion that such two sheds are necessary for the business of compl't road at that station; that a convenient and proper location for them is south of its main line and east of the main line of the Omaha road; that said last-named main line is about 1,100 feet distant from the east line of the forty-acre tract of land hereinbefore described; that a piece of land south of and parallel with the right of way of compl't road's main line, two hundred feet in width, extending from said east line to the eastern line of the right of way of the Omaha Company, is necessary and sufficient for that purpose; that each of said coal sheds would require a width of forty-eight feet; that the three tracks would require a width of thirty feet, making in all 126 feet, leaving 74 feet in width for wagon roads and other necessary purposes; that such shed could be constructed with a length of about 800
424 feet, and if so built, with proper pockets and shutes, would afford a sufficient storage capacity for the needs of compl't road.

The undersigned is further of opinion that a strip of land, part of the forty-acre tract above described, upon the north side of compl't road's main line, of sufficient width to include the "turn-table" above described, and extending, of uniform width across said tract, from its eastern line to the eastern line of the right of way of said Omaha Company, is necessary for the business of said compl't road at that place; that such tracts, together with the depot grounds west of the Omaha Line, are sufficient to furnish ground for all necessary lumber and cattle yards, engine-house, and repair shop and for the accommodation of all grain elevators and other structures required for the business of compl't road at that station.

The undersigned further reports that the present depot grounds at the station of Arcadia consist of a strip of land parallel with the south line of the right of way, about twenty-five feet in width and an average length of about 900 feet, making, with the right of way, an extreme width of about one hundred and twenty-five feet. There is one side track south of the depot building, connecting with
425 the main track at both ends, with a length of about 1,350 feet. The depot building is between the side and main tracks.

The undersigned is of opinion that the depot grounds are insufficient to accommodate the business of the compl't road at that station; that said road needs an additional strip of land one hundred and seventy-five feet in width and fifteen hundred feet in length upon the south side of its present depot grounds and parallel therewith; that between the eastern end of the present depot grounds and

the eastern end of the additional tract above described the width of the said additional tract should be 200 feet, so as to make the depot grounds at that station fifteen hundred feet in length and three hundred feet in width, including the right of way; that the western end of such proposed tract should be at a point about opposite the western end of the present side track and extending thence easterly the distance of fifteen hundred feet; that the proposed depot grounds will furnish all necessary facilities to compl't road for lumber, coal, and cattle yards, grain elevators and other warehouses and other purposes, and can be taken wholly upon the south side with equal advantage to the company and less inconvenience to and interference with the interests of third parties than if taken partly
426 upon both sides; that the premises hereinbefore described will include improvements made thereon by defendant, Geo. Hiles, as follows:

The Mineral Springs Hotel, situated upon lots 10 and 11, in block 23, of the value of four thousand five hundred dollars.

Part of lot 7, in said block; upon which lot stands a brick building of the value of twenty-five hundred dollars, one-half of which belongs to said defendant.

The lumber sheds owned by said Hiles used in connection with a lumber yard, of the value of two hundred and fifty dollars.

The undersigned further reports that he employed Messrs. Sawyer and Weston, short-hand reporters, to take down the testimony of a portion of said witnesses, and Messrs. C. H. Briot & Co. to take down the remainder. Their bills for such services are hereto annexed.

That he has expended in the necessary traveling and for board while traveling in the execution of the order in this cause the sum of thirty dollars and twenty-five cents, and for copying and other services the sum of ten dollars; in all, $40.25.

March 16th, 1882.

Respectfully submitted. JAMES H. HOWE,
Special Master.

427 *Testimony Taken Before Hon. James H. Howe, Special Master, and Filed with his Report.*

Circuit Court of the United States for the Eastern District of Wisconsin.

TIMOTHY CASE, Receiver of The Green Bay & Minnesota Railroad Company, Plaintiff,
against
DAVID M. KELLY, HENRY KETCHUM, GEORGE HILES, and THE ARCADIA MINERAL SPRING COMPANY, Defendants.

GREEN BAY, *Nov. 9th*, 1881.

Testimony taken under the order of the court.

Before James H. Howe, master in chancery.

Appearances: For the plaintiff, Theodore G. Case; for the defendant (Mr. Kelly), E. H. Ellis.

The order of the court read by the master.

Coun. for pl't'ff objected to any testimony whatever on behalf of the defendants, as under the order and the decision of the court in the case the defendants acquired this property fraudulently while acting as trustees of the property, and as trustees they can hold no more of the property than the *cestui que trust* is entitled to. They are not the proper party to these proceedings, as the question of proof
428 lies between the original grantors of the property and the company, to be decided by the master upon any other proof which may be submitted, other than that which is attempted to be produced by the defendants, as they have no right to be heard in the premises.

By the MASTER: Have you any testimony that you wish to offer, Mr. Case?

Not at present.

By the MASTER: Mr. Ellis, have you any testimony to offer?

Mr. ELLIS: We have.

D. M. KELLY was called as a witness upon the part of the defendants, who, being sworn, testified as follows:

Direct examination:

Coun. for pl't'ff objected to his being sworn, and to his giving any testimony whatever in this case.

I am a resident of Green Bay and of lawful age. I was the contractor for the building of this road from Green Bay to the Mississippi. After the road was completed, in the fall of 1873, in the spring of 1874, I was elected vice-president and general manager of the road, and continued in those capacities until December, 1877. At the time I was in charge of the road as general manager
429 and up to the time I resigned and left the service of the company the lands devoted to and used by the railroad company for depot purposes at Seymour were about 5 acres in extent.

Coun. for pl't'ff objected specially to any testimony relating to the amount of land used at the time that the witness left the railroad company as irrelevant.

By the MASTER:

Q. Have you a map of it?

A. I have a plat here showing the 5 acres used for depot purposes, as well as other lands owned by me at the same point.

(Witness produced map, marked Exhibit A, for identification.)

By Mr. CASE:

Q. Was that made by any surveyor?

A. That is a copy of the recorded plat made by a surveyor.

Coun. for pl't'ff objected to introduction of the map.

By the WITNESS: The lands used for depot purposes, and dedicated for that purpose at the time I was in charge of the road, was 5 acres,

represented on this Exhibit A. At that time, and since, I owned other lands at Seymour, represented properly on Exhibit A.

430 By the MASTER:

Q. What is there to show the lands you own?
A. This red.
Q. The lands marked in red?
A. The lands marked in red.
Q. The plats surrounding that red ink show other lands owned by the defendant then and now?
A. With the exception of block 44, which has been exchanged for an unplatted piece with certain parties. The 5 acres devoted for depot purposes, station purposes, which were used for railroad purposes up to the time I left the road, in 1877, are designated on this Exhibit A, and have no connection with any other land which I then held or hold now at Seymour. No conveyance of the depot grounds at Seymour has ever been made to the railroad company from myself, and no demand has ever been made upon me for it.

Coun. for pl't'ff objected.

I have stated that no conveyance has yet been made by me to the railroad company of the depot grounds at Seymour, and neither have I ever been asked to make a conveyance.

I would say at the time the road was constructed, and up to the time I left the service of the road, in 1877, the 5 acres desig-
431 nated on Exhibit A, as depot grounds, were amply sufficient for the business of the railroad company at Seymour, and in fact were never fully used.

Cross-examination by Mr. CASE:

Q. What do you mean by being a contractor?

Coun. for defendant objected to this testimony.

A. I mean that a contract existed between myself and the railroad company whereby I obligated myself upon certain considerations to build the Green Bay & Minnesota railroad.
Q. Did you put any of your individual money into it?
A. I think I did.
Q. How much was it?
A. I think possibly I had invested at one time $100,000.
Q. Was that refunded to you?

Coun. for def't objected to all these questions as incompetent and entirely irrelevant to the matters involved in the order.

Q. Answer the question.
A. I believe the greater portion of the money I invested was returned to me.
Q. Didn't you receive a salary from the company at the time you were engaged in the construction of this road?
A. Among the considerations in the contract.
Q. Answer my question.

432 Coun. for def't objected as immaterial and incompetent.

Q. Without any explanation, I would like to have a categorical answer.

By the MASTER:

Q. Answer the question. You can make any explanation you wish afterwards.

A. Among the considerations set forth in the contract was that I should receive a certain sum of money a year and a certain amount of the capital stock of the company for building the road.

By Mr. CASE:

Q. Did not the company surrender to you all its mortgage bonds, municipal aid bonds, and capital stock to build the road?

Coun. for def't objected.

A. It was provided by the contract that the contractor, myself, should have the mortgage bonds, local aid, and stock to assist him in building the road, and that any surplus left over from the local aid mortgage bonds was to be paid to the treasurer of the company; any stock that remained after the road was built was to be my property.

Q. Weren't contracts to construct the road made directly from the company to certain other individuals?

433 A. They were not.

Q. You are positive of that as of anything you have sworn —?

A. I am positive that in some cases they were not. I am positive in some cases the subcontractors took their title directly from me.

Q. Take the contract to build from Green Bay to New London; was not that contract let by the company to other parties than yourself?

A. My impression is that that contract was let before I had a contract to build the road.

Q. Take the contract from New London to Grand Rapids; was not that let by the company to other parties than yourself?

A. No, sir; that contract was let by myself.

Q. From Grand Rapids to Merrillon?

A. The contracts all west of Grand Rapids were all let by myself. In those negotiations between myself and subcontractors the contracts—some of them were—undoubtedly signed by some of the company, and in every instance they were approved by myself.

Q. How can you reconcile the fact that you were a contractor when the contracts to let the construction of the road were let by the company, duly attested, to other parties than yourself?

Coun. for def't objected.

A. I don't make any attempt to reconcile it.

Q. You cannot reconcile it?

434 A. I don't say that I cannot. I say the facts were so and so. The fact was that every contract let for the building of that road was approved by myself as contractor, and in my contract with the railroad company it was expressly provided that no contract should be entered into without my approval in writing.

Q. Isn't it the fact that you were simply the financial agent and custodian of the bonds and securities for the company?

A. That was not the fact.

Q. For which you received a salary; that you expended no money whatever towards the construction of the road, but that the contracts were let by the company to other parties, and you, as financial agent of the company, paid the other parties from the securities which were surrendered to you by the company?

A. That was not the fact.

Q. That was not the fact?

A. No, sir; that was not the fact. I would add that the contracts are still in existence, showing the exact relation between myself and the railroad company. The legal construction of those contracts I do not pretend myself now to give, but I simply state that I was a contractor and had written contracts; under those contracts the road was built.

435 Q. Did you ever know of an instance of the contractor of a railroad to agree to build a whole railroad for a company allowing a third party to come in and take a contract from the company, irrespective of your own rights under your contracts; did you ever know of such an instance?

A. I never knew two railroad contracts to be exactly alike.

Q. Did you ever know of a railroad contractor receiving a salary?

A. Yes, sir.

Q. Did you ever know of a railroad contractor having all the securities of a railroad surrendered to him?

A. I have.

Q. Do you further know of a railroad company letting contracts to other parties besides the party that they originally contracted with?

A. I know in this case all the contracts were let by myself, and I approved every contract in writing, and no contract was valid without my written approval.

Q. You are positive that you approved the contract let by the company to parties west of Grand Rapids, are you?

A. I am confident I approved them all.

Q. Where were those approvals—upon the face of the contracts?

436 A. I don't recollect if those approvals were upon the face of the contracts or by an express instrument in writing.

Q. Why was it that you did not let the contract yourself to the third party?

A. I think I did in every case.

Q. You think you did in every case?

A. I did; yes, sir.

Q. Then there are no contracts let by the company to third parties in which the company is a party?

A. I have stated that while some of the contracts were probably signed by the officers of the railroad company, yet the letting of the contracts was all done by myself on my own authority and on my own judgment, and if any contracts bore the signatures of the officers of the company they were still approved by myself, and were not valid until they were approved, and that any contract bearing the signature of the railroad company was simply so made so that the parties receiving the contract might feel that they had the entire authority from every one who by any possibility might have any authority to give.

Q. Was there any penalty imposed upon you for failure to do this work?

437 Coun. for def't objected.

A. My impression is that I obligated myself to build to certain points within certain times, and if I didn't reach those points within those times I was to surrender certain considerations which otherwise would be mine.

Q. Isn't it the fact that you were entitled to whatever proportion of the stock that the stock bore to the amount of the railroad that you built, no matter what time you might stop building; isn't it a fact that you were subjected to no loss whatever under the contracts?

A. That is a matter of legal construction.

Q. Isn't it a matter set up in the contracts that no matter how many miles of road you may have built that you were entitled to the proportion of the stock that the miles that you built bore to the whole railroad?

A. The contract sets that forth; my recollection is not clear on that point.

Q. Was there any percentage held back by the company to you in paying over the securities?

A. I think there was; yes, sir.

Q. What was that?

A. I have forgotten what it was.

Q. Wasn't that percentage held back by the company to those other contractors who did the work?

438 A. In letting subcontracts it was the custom to hold back, I think, 15 per cent. until the contract was finally closed; when a full settlement was made with the subcontractor that was paid over.

Q. Isn't it the fact that under this contract if you let to third parties the third parties themselves were paid by the company and proper vouchers were given to the company for the moneys?

A. It was expressly provided in my contracts with the railroad company, or one of them, that any disbursements made by me as contractor, the proceeds for which were derived from the negotiations for local aid or mortgage bonds, should be paid through the treasurer of the company; that was set forth in one of my contracts.

Q. Did you ever hear of an instance of a contractor making it

imperative that no railroad should enter into any contract whatsoever without his consent?

A. I have.

Q. Where?

A. I have heard of several cases of that kind; I think that is a common thing to do.

Q. Name an instance.

A. That was the case on building a certain portion of the Erie railroad, as I know.

439 Q. That no contract whatever should be entered into by the company without the consent of the contractor?

A. For the building of the portion of the road which the contractor had agreed to build.

Q. This contract refers expressly to the fact that there shall be no contract whatever entered into by the road without your consent. Have you ever heard of an instance of that kind?

A. I think I have.

Q. Wouldn't you rather think that the man was assuming to be the company—in fact a man that had that power over the company was the company himself?

Coun. for def't objected.

A. I don't suppose anything about it.

Q. I want an answer to the question.

Coun. for def't objected as irrelevant and immaterial.

Mr. CASE: We claim that all the testimony should be thrown out, on the ground that the defendants here are trustees.

Mr. ELLIS: We only offered this testimony for the purpose of showing the extent of the grounds for depot purposes, and the

440 witness happened to state in the beginning that he was the contractor of the road.

The MASTER: You can withdraw that testimony. My own view is that the testimony is entirely immaterial and irrelevant.

Mr. KELLY: As I am of counsel I will state that the point in stating that I was the contractor and manager was for the purpose of showing that I was in such a position that I was entitled to give an opinion as regards the lands for depot purposes. If there is any point made on that I withdraw that testimony.

The MASTER: Strike out that part of the testimony that relates to his being a contractor.

Mr. ELLIS: Then also the cross-examination.

The MASTER: That follows, of course.

By Mr. CASE:

Q. You spoke about the property at Seymour. What do you mean by the property being dedicated to the company? Didn't you swear upon your direct examination in this case that the property was dedicated?

A. I stated in my direct examination, as I recollect, that
441 of the lands which I acquired at Seymour 5 acres had been used for depot purposes, and that I had always been ready to give a conveyance to the company of that 5 acres, but that I have never been requested to do so.

Coun. for p'ltff objected.

A. In that sense I mean that the 5 acres at Seymour were dedicated for railroad purposes.

Q. From whom was that property dedicated—those 5 acres that you refer to?

A. It was dedicated by me.

Q. Dedicated by you to the company?

A. It was.

Q. Is there a deed upon record?

The MASTER: He said he had made no conveyance.

By Mr. CASE:

Q. Who was the original grantor in the property?

A. I really cannot tell who the original grantor was.

Q. Wasn't it Minnie Robbins?

A. It might have been Minnie Robbins' husband, possibly.

Q. Minnie Robbins, the wife of the grantor in this case, swears that there was a tract of 8 acres conveyed upon which the depot now stands.

A. The depot stands or did stand in 1877 on 5 acres of
442 ground. I did not hold any other lands connected with that 5 acres. If any conveyances were made by other parties they were made unknown to me and to other parties than myself. The 5 acres which were used while I was general manager of the road at Seymour for depot purposes were not connected with any other lands owned by the defendants in this suit.

Q. How do you reconcile your testimony with the fact that the exhibit on record shows that there was 8 acres in one conveyance?

A. I state the fact as I understand it.

Q. Then if that 5 acres was a part of the 8 acres which was made in one conveyance then you are willing to admit it all belongs to the company, are you?

A. I am not; I consider that the company gets its title through me, and I have endeavored to testify what was used by the railroad company for depot purposes at Seymour and what in my judgment was sufficient for depot purposes at Seymour of the lands which I held title to.

Q. Was not the 3 acres a part of the tract of 8 acres, of which 5 acres formed the other portion; is it not now being used for a right of way?

A. I can't state that.

443 Q. You don't know?

A. I presume likely that the right of way and the depot grounds together may make about 8 acres, but I cannot state positively.

Q. That you swear is necessary for the railroad purposes, in your opinion—was at the time you left?

A. I did not swear to that and haven't sworn to it.

Q. Please explain what you have sworn to.

A. I testified that the 5 acres of land which were used when I was general manager of the company, at Seymour, for station purposes, was sufficient. In my judgment, they were more than sufficient for all the needs of the railroad. In my judgment, 3 acres at Seymour, during the time I was connected with the Green Bay and Minnesota road, would have been sufficient for railroad purposes at that time. As a matter fact, there were 5 acres set apart and designated as railroad grounds at Seymour. There are 5 acres shown on Exhibit A as station grounds.

Q. Doesn't the railroad track and the depot property cover the 8 acres—run directly through the 8 acres?

A. I say it is possible that the right of way and the depot grounds together may make 8 acres; I will not be certain about that.

444 Q. Then, if they do make 8 acres, 8 acres are necessary at Seymour?

A. No; they are not. I have testified that, in my judgment, 3 acres were amply sufficient at Seymour.

Q. Then how can 3 acres be sufficient, if they occupied the whole 8 acres?

A. They never occupied the whole 8 acres.

Q. They ran through it?

A. A railroad may run through 160 acres, but you would not need the whole of it for railroad purposes.

Q. Doesn't the depot want side tracks?

A. We had side tracks.

Q. Room for warehouses?

A. The grounds are ample and more than sufficient.

Q. Don't you know that the warehouses at Seymour do not stand on this particular 5 acres?

A. I don't know that to be the fact.

Q. Don't you know that they are standing on these 3 acres?

A. No, sir; I don't know it. I don't believe that is the case.

Q. Are you not certain that is the case?

A. I am not certain. I am certain that the 5 acres shown on Exhibit A for depot grounds are sufficient for all side tracks

445 and all warehouses which were necessary at Seymour at the time I was general manager of the road. It is possible that parties may have built warehouses off of the railroad grounds for some reasons; that I can't say.

Q. Those are used for railroad purposes?

A. I can't tell you.

Q. How long since you were at Seymour?

A. 3 years; possibly more.

Q. Does the business of a railroad ever increase?

A. It sometimes increases and sometimes diminishes.

Q. Do they ever want increased facilities for doing the business at stations?

A. That is sometimes necessary, to have increased facilities, I believe.

Q. You are swearing now as to what the road needed at the time you left it?

A. I am testifying as to what the road needed at the time it was built and during all my connection with it, up to December, 1877.

Q. You are not able to tell how much the road needs now?

A. I don't pretend to state my own knowledge of what the road needs now.

Coun. for pl't'ff moved right here that the entire testimony of this witness be stricken out; that the master is not to determine
446 the question of what the road needed some years ago, but what the road needs now for railroad purposes, and from this evidence the master will be wholly unable to come to any decision of the question.

The MASTER: I think the testimony should remain upon the record.

Mr. CASE: Under my objection to it as being wholly irrelevant and incompetent.

Mr. CASE: We object to any proof being introduced as to what the railroad company's needs were 3 years ago.

The MASTER: I shall take all the testimony offered upon that point and all the testimony offered as to what the railroad company needs now.

By Mr. CASE:

Q. How long have you been engaged in the operation of a railroad?

A. It is about 10 years since I have had anything to do—since I commenced to have anything to do with railroads.

Q. Upon what railroad did you first begin?

A. The Green Bay & Minnesota, then called the Green Bay & Lake Pepin.

447 Q. Have you ever been engaged upon any other road since?

A. Not particularly.

Q. Were you engaged in the active operation of the Green Bay & Lake Pepin railway?

A. I was.

Q. Didn't your duties at that time, at the time you were connected with the Green Bay & Lake Pepin, confine you more closely to the financial matters?

A. I had a good deal to do with the financial matters, and also employed myself with the daily operation of the road.

Q. Didn't you have a superintendent under you who looked after the operation of the road particularly?

A. We had a superintendent whose duties were involved in that.

Q. Wasn't it a part of his duty to see that there was sufficient room obtained at the different places?

A. No; that was not a part of his duty. Of course he was expected to advise on the subject, but that was a matter that I, perhaps, more particularly looked after.

Q. What was the annual amount of business at Seymour?

A. The books will show that. I can't state.

Q. Do you know whether the business has increased or diminished?

448 A. My opinion is that it has not increased.

Q. That is your opinion?

A. That is my opinion.

Q. If, as a matter of fact, the business has increased or doubled since you left the road wouldn't it require increased facilities?

A. I think not. I think three times the amount of business could be done economically and expeditiously at Seymour on the 5 acres that was done at the time when I was general manager.

Q. In your opinion, the ground that was used for railroad purposes at Seymour is perfectly adequate to do any amount of business of the railroad?

A. I don't think so.

Q. What do you think—what limit would you place on it?

A. I think three times the amount of business could be done on these same grounds that was done when I was general manager of the road.

Q. Do you think an increased amount of business can be done at Seymour with the side-track facilities that are now at Seymour?

A. I can't say what the side-track facilities now are. I can only tell what they were when I was general manager.

449 Q. Then, how are you able to tell what business could be done with the president facilities, even if the business was three times as large?

A. I havn't stated that; I stated that the lands used for station purposes at Seymour at the time I was general manager were amply sufficient, in my opinion, to permit an economical and expeditious transaction of three times the amount of business which was then done at that station.

Q. Then, in your opinion, this land is the only land that is necessary for railroad purposes at Seymour?

A. I think that these lands are amply sufficient for — purposes at Seymour.

Q. How about this property that Sally Munger conveyed to you? Doesn't the railroad run through portion of that?

A. No, I think not; I think there is a piece of land between the depot and her land.

Q. Doesn't the railroad strike the corner of it?

A. Possibly the right of way may strike one corner; I am not certain.

Q. Isn't that land necessary for gravel purposes?

A. It was not at the time I was general manager of the road.

Q. You don't think that could be used for gravel purposes at the present time?

A. I don't express any opinion about it.

450 Q. You don't know anything about it?

A. I say up to the time I left the management of the road it was not necessary for gravel purposes.

Q. You can't tell whether it is necessary now or not?

A. I can't tell whether it is necessary now or not; I don't know where the gravel pits are—how far you haul gravel.

Q. These lands that Simeon Munger conveyed, were they used for the right of way?

A. I think not.

Q. You think not?

A. I think not; I am not positive.

Q. How much was there of it?

A. I think there was about 3 acres of the Simeon Munger land—2½—3 possibly.

Q. You don't think the railroad needs that at all if it runs through it?

A. I don't think the company needs that for depot purposes.

Q. For side tracks and warehouses?

A. At the time I left the road that land was not necessary for side-tracks, depot purposes, or warehouse purposes.

Q. You don't know now whether it is necessary for any railroad purposes or not?

A. I don't think it is.

451 Q. Do you know?

A. I don't know. I don't think it is.

Q. Then you are wholly unable to state what the railroad company needs now at that point?

A. I am only of the opinion that the facilities left by me are ample.

Q. Ample for elevators?

A. Elevators are not necessary at Seymour now.

Q. In your opinion they are not necessary?

A. They are not necessary now.

Q. Then you are simply testifying as to your opinion?

A. I am testifying to my knowledge at the time I left the road.

Q. In going beyond that time you are testifying not to anything except your opinion?

A. That is so simple that I suppose the reporter does not need my answer to that.

Q. I prefer you to answer that.

A. I will say this, in general terms——

Q. Answer my question, and you can make explanations afterwards.

A. Up to the time I left the road the facilities used by the railroad company at Seymour were ample. What the company may need to-day is simply a matter of opinion by me from my knowledge of what the company used in the past.

Q. That will do; you can go to the next station.

452 By the MASTER:

Q. State the length of this 5-acre tract that you have got on the map here.

A. I shall have to refer to the map to do that.

Q. 200 feet to the inch, I see, is the scale.

A. (Witness measures on the map.) The distance across the 5 acres shown on Exhibit A as being depot grounds is a thousand feet.

Q. Width?

A. A thousand feet in width—in length along the track.

Q. What is the width of the tract?

A. The width of the tract?

Q. Take the tract itself first.

A. The width of the tract is 225 feet.

Q. What is the width of the right of way at that point?

A. The right of way at that point is 100 feet.

Q. And continues 100 feet through the town?

A. Through the town; yes, sir.

Q. Is there a street between the right of way and the 5-acres depot grounds as platted?

A. There is no platted street across the 5 acres.

Q. I see the words on the map "street?"

A. There is no platted street. The plat does not extend across. That was simply designed to drive up to the depot.

453 Q. Then this that is marked on the map depot street is not dedicated to the public as a street?

A. No; it is simply for depot purposes, along the right of way, as I understand it; for depot grounds.

Q. So, then, taking in the right of way, the width of it would be 225 feet, and the hundred feet would be half of that?

A. It is 325 feet, including the right of way; a thousand feet along the track in length.

Q. What was the number of side tracks at Seymour when you were there?

A. In 1877, when I left the service of the company, there was one side track running behind the depot building on the 5 acres shown in Exhibit A.

Q. What was the length of that side track?

A. I should say 600 feet; it didn't run across the entire 5 acres, but to the rear of the depot and beyond the depot.

Q. It is a side track not shown on this plat?

A. It was put in after that plat was made; then there was a side track on the south side of the railroad, opposite the depot or nearly so, for the purpose of accommodating the business on the south side of the right of way.

Q. Did that last-named side track extend off from the right of way—off from the hundred feet?

454 A. I think it was all on the hundred feet, but possibly it might have encroached on the lands south of the right of way owned by private parties.

Q. Those side tracks that you speak of were both dead end side tracks?

A. Yes, sir; dead end side tracks.

Q. Do you recollect the length of the one on the south side?

A. I think it was about 350 feet or 400 feet. I would like to correct myself. The depot was located between the main track and the side track and the main side track extended behind the depot and was open at both ends; then in addition to that was a side track on the south side which was open at one end only.

Q. About 350 feet long?

A. About 350 feet long.

Q. And the side track which you speak of being 600 feet long is the one substantially shown on this?

A. Yes, sir; I presume that, the head-blocks and all, it would make about 800 feet, but I think there is about 600 feet of available space there.

Q. That is all.

455 Coun. for def't- offered in evidence the diagram marked Exhibit A.

By the MASTER: Go to the next point.

By the WITNESS: The next point where lands are in controversy is Black Creek. At the time I left the service of the company and while I was the general manager of the company about 8 acres were used at that point for depot purposes, and this lot of land is shown on this diagram (marked Exhibit B for identification). At that point the defendants or some of them own an interest or a half interest in about 40 acres.

Coun. for pl't'ff objected.

But I am unable to state now in whose name the title stands; but of that 40 acres at the time the same was platted 8 acres was set apart for depot purposes, shown, as before stated, on the diagram marked Exhibit B.

By the MASTER:

Q. As a part of your testimony, give the length and width of this tract.

A. (Witness measures on the map.) The track runs through the 5 acres alluded to 1,200 feet, and the 8 acres are in width 300 feet.

By Mr. CASE:

Q. The depot grounds stands on the additional 3 acres?

456 A. 8 acres, I think.

Q. 8 acres altogether?

By Mr. CASE: That is all we claim at Black Creek.

The MASTER: There is no dispute about that?

Mr. CASE: No dispute at Black Creek; we claim only 8 acres at Black Creek.

By Mr. CASE:

Q. This land that Mr. Muhl conveyed to yourself—5 acres—do you know as a matter of fact that the land is not now necessary to put warehouses and elevators upon for the business of the road?

A. I presume it is possible to put elevators and warehouses on that land, but I don't think that anybody thinks that is necessary for that purpose.

Q. Isn't it directly contiguous to the railroad depot—juts up against it?

A. Not up against the 5 acres alluded to as railroad station grounds at Seymour. It may connect with the right of way at same point.

Q. It can be used for the purpose of erecting warehouses upon it. Isn't it a matter of fact that there are now warehouses now
457 upon it which are being used by the railroad company?

A. I couldn't state whether there are warehouses upon it, as I have not been at Seymour for 3 years. I will say this: That I am satisfied that 5 acres was ample room for all the business at Seymour. Of course it is possible to build warehouses anywheres where a side track can be brought to it.

Q. Don't you know that the wood and timber which is used for the railroad company at Seymour is piled upon that 5 acres?

A. It was not so when I was there; I don't know as to the matter now.

Q. Don't you know that the railroad company would require more than 5 acres to put the wood and timber on used for the railroad company outside of the mere erection of side tracks and depot? Don't you know that the railroad company used other land than the 5 acres?

A. I don't think they need more than 5 acres.

Q. Then you think 5 acres at Seymour would be sufficient to build elevators upon, warehouses upon, depot upon, and make storage ground for the wood and timber? You think all that could be done with 5 acres and not interfere with the proper running of the railroad?

458 A. I think all the business that was ever done at Seymour could be done upon that.

Q. Everything that I have named to you?

A. I have no question about it.

Q. Without obstructing, interfering, or impeding the business of the railroad?

A. I have no question about it.

Q. That will do.

By the WITNESS: In regard to the Black Creek depot grounds I would like to state that they are amply sufficient for all the railroad purposes up to the time I left the road.

Mr. CASE: There is no fight over Black Creek at all. We understand that; we have agreed upon that.

By Mr. CASE:

Q. You say that 8 acres were necessary to do the business?
A. I have never so stated.

(At the request of Mr. Case the reporter read the testimony of the witness (on page 42) in regard to the lands at Black Creek.)

By the WITNESS: I would like to state further in my direct examination that 3 acres of that 8 acres at Black Creek would have been amply sufficient for all railroad purposes at that point up to
459 December, 1877, when I left the service of the company; that the 8 acres were not necessary and were far in excess of the actual needs of the company for the transaction of its business—all the purposes included.

Q. Yet you swear that those lands were used, the 8 acres were used, for railroad purposes at that time—at the time you left the company—do you?

A. Are you cross-examining me? I was not through with Black Creek.

Q. I supposed you had finished; you can go on.

A. The 8 acres were set apart for railroad purposes at the time or soon after the road was built through Black Creek, but a very small portion of the 8 acres were ever used actually in the transaction of the business of the company or in the operation of its road. To facilitate the purposes of this meeting the defendants, however, do not care to make any point in regard to such excess which they claim, but are willing that the railroad company should have the entire 8 acres if it desires it, subject to such order as the court may see fit to make in regard to any expenditures that the defendants may have made in connection with the 8 acres. Now, I am ready to answer your question.

460 Q. I am through; go on to the next station.

Coun. for def't- offered in evidence the map, marked Exhibit B.

Mr. KELLY: If the court please, it is shown in evidence already introduced, and evidence which has not been controverted or denied, that the defendants in several cases paid divers sums of money to acquire the ownership of these different lands which have been in dispute. I would like to inquire if the court understands that it is necessary to put in evidence at this time in regard to any expenditures which the defendants may have made on this land?

The MASTER: Except by way of improvements, as I understand the order.

Mr. KELLY: As a matter of fact, some of the defendants have expended some money upon improvements.

Coun. for def't- (Mr. Kelly) offered in evidence a diagram of the so-called depot grounds at Manawa, which is the third station west of Green Bay, where any lands are in controversy in this suit, marked Exhibit C for identification.

461 Coun. for pl't'ff objected to the introduction of this map, that there is nothing to show that it is reliable.

By the WITNESS: At Manawa the defendants in this suit own 40 acres, and possibly more, of land contiguous to the track. In whose name the title to the property is I am unable to state at present, not having any memorandum with me. The defendants claim that the lands which they designate as depot grounds at Manawa were amply sufficient for railroad purposes when the road was constructed and have been sufficient ever since and are now for such purposes. The lands referred to are a little over 3 acres. The track runs through these acres a distance of about 1,200 feet, and the 3 acres in width, including the right of way, are about 300 feet. These, about 3 acres, were sufficient for all railroad purposes at the time the road was built and up to December, 1877, with the exception that the railroad company had taken gravel from a portion of the lands south of the depot grounds so called. The business at Manawa up to December, 1877, was not sufficient to utilize but a small portion of the
3 acres even. The defendants have never given any title to
462 any of this property to the railroad company and never have been asked to do so.

Coun. for pl't'ff objected to that and asked to strike it out as irrelevant to the case.

The MASTER: Strike that out.

Mr. KELLY: I think that is all we desire to offer at present in regard to the lands at Manawa.

By the MASTER:

Q. The hundred feet of right of way is included also in the 3 acres?

A. It is.

Q. When you left the road do these red lines correctly show the side tracks there were at that time?

A. I so understand.

Q. That is your recollection of it?

A. That is my recollection of it.

Q. This was the one side track that was used for business purposes and this for the gravel pit (indicating on the map)?

A. Those are the tracks and the only tracks used at the time I left the road in 1877.

By the MASTER: Is there any claim made, Mr. Case, that you should have more lands here because of the gravel pit?

463 Mr. CASE: Yes, sir; and we want some warehouse room there.

Mr. ALTON: It is 6¼ acres here—3 acres laid off besides the depot grounds.

By the MASTER:

Q. Mr. Kelly, you see how that is?

A. (Measuring on the map.) I desire to correct my statement to this extent, that the 3 acres alluded to as depot grounds do not include the right of way, and in addition the right of way at Manawa

is about 3 acres more, making about 6 acres used at Manawa or designated at that point for depot purposes—depot grounds.

Q. When you were general manager of the road you used this track for the purpose of taking gravel for the use of the road?

A. That was used for taking gravel, and also we at times bought logs, which were rolled down the bank and loaded on that track.

By Mr. CASE:

Q. Was that included in the 6 acres?

A. That side track is not on the 6 acres at all.

Q. How much more land does that require?

A. I think, perhaps, one acre more of that forty might have been used for gravel purposes and for the purpose of getting logs at that point.

464 Q. Hasn't that track been extended since you were manager of the road?

A. I am unable to state whether it has or not.

Q. Isn't more gravel required there?

A. I am unable to state now what gravel is necessary now for the road.

Q. Who were the original grantors of the property; Marcus Wood and wife, were they?

A. I think not of that forty. I think a man by the name of Hall was the grantor of that forty.

Q. The exhibit shows that Marcus Wood and wife deeded to you personally on October 22nd, 1872, 100 acres of land at Manawa?

A. I think that hundred acres is over in this direction indicating on the map).

Q. The testimony further shows that that depot stands upon it?

A. I won't be positive whether it does or not.

Q. Wasn't that taken at the time for the railroad company?

A. Those 3 acres?

Q. The whole property from Marcus Wood.

A. It was not.

Q. Did you pay him any money for it?

A. If the court please I think that question has no bearing upon the case. I would be pleased to answer the question and go

465 into a full explanation if the court desires.

By the MASTER: I don't think it is relevant.

By Mr. CASE: I won't press that.

Q. How long since you were at Manawa?

A. 3 years.

Q. When were you there to stop there?

A. I think 3 years ago.

Q. What year and what month?

A. I think 3 years ago this fall I was in Manawa.

Q. What year was it?

A. That would be the fall of 1878.

Q. Were you connected with the road at that time?

A. Not as an officer.

Q. Were you interested in the business of the road at that time?
A. I think I held some stock in the company at that time.
Q. You are not a stockholder now, then?
A. I hold some stock in the company.
Q. Do you know whether the business at Manawa has increased or diminished since you were there?
A. My impression is that it has not increased. I will not testify directly as to that point. I presume the railroad books will
466 show just what the business was then and just what it is now.
Q. You say, then, that there was, according to this map that you offer in evidence, about 6.27 acres, exclusive of the land used for side track, for gravel purposes, used for depot purposes and for the right of way?
A. I say that about 6 acres were designated as railroad grounds in Manawa for depot purposes for the transaction of the business of the company.
Q. Outside of this land used for gravel purposes?
A. The 6 acres was outside of that. There might have been some gravel on the 6 acres, but there was a gravel pit off of the 6 acres at Manawa out of which the company took gravel at one time.
Q. Do you know whether the gravel has all been exhausted from that bank yet?
A. I couldn't say.
Q. You are simply testifying as to what was the fact in 1877 then— or 1877?
A. I state that I have no present knowledge as to the needs of the company regarding gravel at that point, or the quantity of gravel at that point.

By the MASTER:

Q. State the length of this tract.
A. It is about 1,400 feet in length.
467 Q. The width?
A. And about 300 feet in width.

By the WITNESS: I would like to add to my testimony that up to the time when I left the service of the company, in 1877, the 6 acres were more than sufficient for the business of Manawa, and, in my opinion, they are more than sufficient for the business there now. To save trouble, perhaps it is proper that I should state that the defendants are willing to make a deed of that 6 acres to the railroad company, subject to such orders as the court may see fit to make in regard to any expenditures that they made at that point.
By the MASTER: I understand you to say that you claim more than that.
Mr. CASE: Yes, sir.
By the MASTER: Go to the 4th station.
By the WITNESS: Merrillon is the 4th station west of Green Bay where there are any lands in controversy in this suit. Merrillon is the junction of the Green Bay, Winona & St. Paul, as it is now

called, with the West Wisconsin railroad. It is about 150
468 miles from Green Bay—west of Green Bay. At that point one of the defendants or more own about 40 acres of land, and this land is shown on the diagram which is now offered in evidence (marked Exhibit D for identification). The depot grounds which were used by the railroad company for the purposes of the business of the road at this point while I was general manager of the road are shown on the diagram now offered in evidence and marked depot grounds on the same. These depot grounds at Merrillon are 300 feet wide on the average, being irregular in shape. The extreme length is about a thousand feet, varying in width. At this point and on these grounds described connection was had between what was then called the Green Bay & Minnesota and the West Wisconsin by means of a Y. These grounds were sufficient for the business of the company up to the time I left its service, and, in my opinion, are sufficient now. On these depot grounds, in addition to the Y already described, was a hotel, called the Blair House. The local business at this point was and is small, the bulk of the business being the exchange between the two roads men-
469 tioned.

The defendants, for the sake of convenience, concede that these depot grounds were necessary and are necessary now for the proper transaction of the business of the company at Merrillon.

By Mr. CASE:

Q. You say that the business at Merrillon was small at the time you left the road?

A. I have stated that the business of the company at Merrillon—the local business—was comparatively small, the bulk of the business being the exchange between the two companies.

Q. Don't you know now that it is the most important station on the road; that numbers of side tracks have been put in, turn-tables have been erected, and freight buildings erected, machine-shops erected, since that time upon the ground outside of this depot, car-shops?

A. I know, as a matter of fact, that land belonging to me at Merrillon has been taken without my consent for railroad purposes, but whether it was needed or not I have not testified, but I do testify now that I do not believe that any more land is necessary now than at the time I was general manager.

Q. You base that belief upon your knowledge of 4 years ago, do you?

A. I base my testimony on my knowledge of 4 years ago and from information I have received since.

470 Q. Do you know anything about the business yourself at Merrillon or of the interchange of business between the Green Bay road and the St. Paul road?

A. I have got the opinions of third parties there of the railroad business at the present time. My information is derived from parties in whom I have confidence.

Q. You don't know anything about whether the business has increased or diminished?

A. My impression is that very likely there has been an increase in the business.

Q. Do railroad companies erect turn-tables upon land that is not necessary for railroad business?

A. I have known that to be done. I think it is done in this case.

Q. Don't you know that the Omaha road and the Green Bay have erected one jointly?

A. I can't say.

Q. Don't you know that they have put in numbers of side tracks together jointly outside of this depot ground?

A. I am informed that side tracks have been put in there since I left the road; who has paid for those side tracks I don't know.

Q. Wouldn't you consider it folly to erect side tracks upon
471 land and make a railroad—to go to expense where it was not necessary?

A. I know that such follies, if they are follies, have been committed frequently, and don't know but they have been in this case.

Q. Do men of wider experience than you have in railroading generally commit this folly? From your experience would you commit a folly of that kind?

A. It would be impossible to find any one of that nature on this road, because there is no one of wider experience on that road.

Q. You think, then, you would not commit a folly of that kind from your own experience?

A. I presume I would make a good many mistakes. I presume I made a good many mistakes in the past, and I presume I would make mistakes in the future.

Q. Would you say that they were put on unnecessarily if railroad men other than connected with this road considered that this land was necessary for the railroad company, and in consideration of that fact had expended money towards the erection of warehouses, &c.; would you consider that necessary? Would you consider that an act of folly?

A. Depend entirely upon circumstances. Let me suppose a question.

472 Q. You cannot suppose a question. Answer the question.

A. Will you please put it?

Q. Whether you would consider it an act of folly for railroad men who had more experience than you have upon railroads, in point of length of roads and in point of numbers of years employed, if they had gone to work and expended money in the erection of side tracks, turn-tables, and property which they considered necessary for railroad purposes; whether you would consider it an act of folly outside of the depot grounds marked there.

A. Depend entirely upon what that course was, whether I should consider it folly or not. In this case I considered such action to have been totally unnecessary and not of consequence to the business of the company, and I believe that the business of the company

could have been transacted with economy and expedition on the ground indicated on that diagram.

Q. Don't you consider it an act of folly because it touches your property? Is not that the ruling operation that regulates your opinion?

A. I don't think I have testified that it is an act of folly. I simply say whether it is or not depends on circumstances.

473 Q. You testified that it was unnecessary to erect them and that it was an act of folly?

A. I have testified it was unnecessary; whether it was an act of folly I am unable to say. I think it was, perhaps, something more than folly.

Q. Then the fact that you own this property or the property is in your name does not regulate or affect your opinion in any way?

A. I don't think that it has any more weight with me in deciding and testifying that the course of the company was unnecessary than the fact that I owned that land had influence with the present management of the road in putting those buildings there unnecessarily for the purpose of occupying my land.

Q. I did not refer to the present management. Don't you know, as a matter of fact, with your experience of railroads, that — junction depots and junction grounds, under certain circumstances, the amount of business always increases very largely over the facilities if they are not changed more than when the business first was in existence?

A. If you will state what those circumstance are I might be able to answer, but without knowing what the circumstances are I am unable to decide.

474 Q. If an increase of the amount of business is given in the course of a few years does not the increase of the amount of the business given by one road to another, if the business was increased tenfold at the station, and there are a number of interchange of cars where before little existed, wouldn't you think more room was necessary?

A. Depend upon how much room was used in the first place. If the room in the first place was ten times necessary, then ten times the amount of business could be done on that land.

Q. Then you think the land here was ten times necessary at the time you platted it?

A. I think it was more than necessary. I didn't say it was ten times necessary.

Q. Why did you commit such an act of folly as to plat out land that was useless, that was more than necessary?

A. I am not prepared to state it was an act of folly to do so.

Q. You have already stated that it was an act of folly to do so?

A. I have not so testified. You asked me if I wouldn't consider it an act of folly to build such buildings, and I said that de-

475 pended upon circumstances, whether it was an act of folly or not, but nothing was said about folly in connection with the depots or other expenditure until you just alluded to it in your question.

Q. I understood you to say it was unnecessary to erect the side tracks which had been erected there, and the buildings which have been erected there. Now you testify that the land was more than was necessary.

A. I didn't so testify.

Q. I understood you to say so.

A. I testified that the buildings which have been erected on land outside of those grounds, shown on that diagram to be depot grounds, were unnecessarily so erected. They might have been necessary on the depot grounds which the company occupied previously as such, but that those buildings were not necessary for the transaction of the business at Merrillon I don't pretend one way or the other.

Q. You are not able to state?

A. I will state that it was unnecessary to put them off of that land described on that diagram as depot grounds.

Q. That is your opinion?

A. That is my opinion.

Q. Based upon knowledge of 4 years ago?

476 A. And information I have received since. I have been very fully posted in regard to the situation of the affairs at Merrillon constantly by parties living there. I think I understand the situation and business, but not the exact business of the road now, of course, because I have not access to the freight books of the company.

Q. Don't you know now, as a matter of fact, that the Y, as you represent in your testimony, is wholly inadequate to do the present business of the road, and that there is another Y needed in this direction (indicating on the map), and it is now being built?

A. That Y shown on the diagram was sufficient at the time I left the service of the company to transact the business between the two companies, and, in my judgment, is sufficient now. Of course how many tracks they have put in since is another matter, and does not depend upon the actual needs of the road.

Q. You don't know as a matter of fact that the road has had to be impeded in its business here for want of sufficient land since you left the road?

A. I don't think that such has been the case.

Q. You would change your opinion as to the wants of the

477 road if you knew that to be the case. Is there anything that would make you change your opinion?

A. Most assuredly if I knew that the business of the company could not be properly conducted on that land shown as depot grounds I would be willing to admit that more land was now necessary.

Q. If competent and experienced railroad men, who had no interest whatever in this matter, should testify that more land was necessary would you believe that?

A. No, sir; I would not, because I would want people that had had experience at that point and who knew all about it.

Q. Then if competent men who knew the situation of this ground and all about it, in no way connected with this litigation, should

testify that double the land was needed, or quadruple the land that is now marked out, would that effect your judgment?

A. Depend entirely upon the men.

Q. I say competent and experienced men?

A. Depend upon what their testimony was; depend entirely upon circumstances.

Q. Don't you think your testimony is tinctured by the fact that you are the owner of the property?

A. I don't think it is.

478 Q. Then you don't think you would be governed by the fact of outside experience in your opinion?

A. I don't say that.

Q. I fail to understand you.

A. It may be your fault. Let me explain: If experts should testify that that land was not sufficient for depot purposes it would depend entirely who those experts were, upon their character, upon the nature of their experience, and upon the grounds upon which they found their opinion. I should take all of those matters into consideration and then should form my mind.

Q. I stated to you competent and experienced men, considered to be so, whether it would affect your opinion in any way, or whether your opinion would not — affected by the fact that they sought to take land from you?

A. Your question is a little ambiguous.

Q. It is clear enough.

A. I think it is not competent.

Q. It is clear enough. I want to know exactly from what you are testifying—whether from your rights of ownership, certain

479 rights which you deem existed, or from your knowledge as a railroad man.

A. I have already stated that I don't think my testimony in regard to the extent of those lands is influenced by my private interests. I also stated that if experience should testify that that land was not sufficient for depot purposes it would depend entirely upon who those experts were, upon their character, upon the nature of their experience, and upon the grounds on which judgment was based. That is as direct as I can answer your question.

Q. Suppose the management of the Green Bay road and the St. Paul road, which management is an experienced management upon both sides, should conclude, after coming together, that certain land was needed for railroad purposes, and in pursuance of that conclusion they contributed jointly towards erecting side tracks, turntables, Y's, and so forth, would you consider then that that land was not necessary for railroad purposes?

A. I should consider then that there was some more data to be obtained in order to form that opinion—if it happened that the management of at least one of those was not experienced and that management——

Q. That is not an answer to my question. I asked you if they were experienced.

A. I don't think they are.

480 Q. I asked you the question if they were experienced.

A. I don't think they are sufficient to giving——

Q. Then you would not be governed at all by their action?

A. I should not be governed by the opinion of one management, most assuredly not.

Q. What constitutes experience in railroading, in your opinion?

A. Some men get as much experience in one year as other men do in ten. Some men never get experience which profits them and by which they are enabled to act correctly and in good judgment; other men, from their own inherent judgment, are apt to do the correct thing after a very little actual contact with a road.

Q. Who would you consider an experienced man—a man who took charge of a railroad and ran it into bankruptcy and failed to pay its debts or the man who took charge of the road and paid its debts?

Coun. for def't objected.

The MASTER: The question seems to be incompetent.

Mr. CASE: Very well; I withdraw it. I ask to strike out his opinions because they are wholly irrelevant.

481 Mr. KELLY: I object to that; if the question should be stricken out I want the answer also struck out.

The MASTER: I think the question goes a little too far. If the objection is insisted upon I shall sustain it.

Mr. KELLY: We have no objection to striking out the whole thing, but we object to striking out the answers which were called for by improper questions of the other side.

The MASTER: What questions and answers?

Mr. KELLY: That question which says the management of the Green Bay road was an experienced management.

Mr. CASE: I am willing to strike out that part of the question which says "which were experienced." I meant to put it if they were experienced.

By Mr. CASE:

Q. Suppose the management of the Green Bay road and the St. Paul road upon both sides should conclude, after coming together, that certain land was needed for railroad purposes, and, in pursuance of that conclusion, they contributed jointly towards erecting side tracks, turn-tables, Y's, &c. Would you consider then that

482 that land was not necessary for railroad purposes?

A. I certainly should not consider that it was necessary, because of that condition of affairs in that statement.

Q. That is all.

By the MASTER:

Q. Will you give me, from the map here, the length of the depot grounds from its western limit to the crossing of the Omaha road?

A. It is nearly 600 feet.

Q. Now give me the extreme width of the depot grounds between straight lines.

A. About 300 feet.

Q. Then, if the southern line of the depot grounds was extended until it met the Omaha line, the extreme width would be 300 feet, as I understand it?

A. That would be the case.

Q. Then what is the length of the side track shown on this plat connecting the two lines?

A. It is about 900 feet.

Q. Does the plat show the curvature?

A. It shows the curvature correctly, as I understand it.

Q. Does it state upon what degree?

A. I think the diagram doesn't show the curve of that Y.

483 I would like to state, further, that the right of way on either side of the depot grounds is 100 feet in width.

Q. That is, that it is 200 feet wide?

A. It is 100 feet wide on either side of the depot grounds—that is, east and west of the depot grounds. I say that they are 100 feet east of these grounds and west of these grounds—100 feet wide.

Q. The plat shows the side tracks as they were upon the depot grounds and the right of way when you left the road in 1877?

A. The side tracks designated on this diagram were in existence in 1877, when I left there.

Q. And were the only ones?

A. And were the only ones. In addition to this Y was a side track east of the junction running along the right of way about 600 feet in the clear.

By Mr. CASE:

Q. This land stands in your name now, I believe, at Merrillon.

A. The title to that land is in my name.

By the MASTER: Go to the next point.

By the WITNESS: The next point on this road where any lands are in controversy is Blair, west of Merrillon. In regard to the conveniences of the railroad at Blair when I was general manager I would say that 2½ or 3 acres would have been ample for all

484 the business done by the road. I believe that the depot grounds, so called, at that point are about 5 acres in extent. I believe also that the title to certain lands there is now held by one or more of these defendants.

Coun. for pl't'ff objected to any belief.

A. But I cannot state in whose name such land may be.

Mr. CASE: I move to strike that out.

The MASTER: Strike that out.

By the WITNESS: But whatever may have been the extent of the land used for depot purposes at Blair it was sufficient for the transaction of the business of the company up to the time I left the service of the company.

By Mr. ELLIS:

Q. Was there any particular tract ever surveyed off there?
A. There was a particular tract designated as depot grounds at Blair.
Q. Containing how many acres?
A. From 3 to 5 acres. The exact quantity I cannot state.
Q. Give the description of that tract at Blair.
A. I cannot.

By Mr. CASE:

Q. When were you at Blair?
485 A. I was in Blair, I think, 3 years ago this fall.
Q. Have you been there since?
A. I have not.
Q. Then you base your testimony here altogether upon your knowledge of 3 years ago, do you not?
A. Not entirely; I base my testimony upon my knowledge of 3 years ago and upon information I have received since from parties living at Blair.

Mr. CASE: I object to his testifying from his information and ask that to be stricken out.
The MASTER: I think his opinions are competent to be received, but the source from which he makes up his opinions is a matter of cross-examination.
Mr. CASE: I object to any information that he may have received; I think that ought to be stricken out.
The MASTER: I think not; not the information upon which he bases his opinions.
Mr. CASE: Note my objection.

By the WITNESS: At Whitehall, one or more of the defendants has title——

Mr. CASE: I object.

By the MASTER:

486 Q. You needn't state anything about the question of title.

By Mr. ELLIS:

Q. Go on and state what the land was that was set apart for depot purposes.
A. There is standing in the name of one or more of these defendants something over a hundred acres——

Mr. CASE: Now, I object, and ask to strike that out.
The MASTER: The simple question of quantity and the question of improvements, if there is any claim made for that, are the only questions submitted to me.

By the WITNESS: At Whitehall the lands used for depot purposes at the time I was general manager of the road are shown in this diagram which is offered in evidence (marked Exhibit E for identi-

fication). The grounds referred to are in extent about 5 acres, and the main track runs through these 5 acres a distance of about 1,500 feet. The average width of the depot grounds, including the right of way, would be about 175 feet. The extreme width of the 5 acres alluded to is about 175 feet, and that extreme width continues for about $\frac{8}{10}$ of the distance. The narrowest portion of
487 these depot grounds is about 100 feet. Upon these 5 acres is located a depot and a side track about 800 feet in the clear and several warehouses, used in storing and shipping grain. These depot grounds, so called, were in excess of the needs of the company at the time I was its manager and, in my opinion, are amply sufficient at the present time for the proper transaction of the business of the company at Whitehall.

Mr. CASE: I object to his opinion.

Coun. for def't- offered in evidence the diagram, marked Exhibit E.

Mr. KELLY: The defendants are willing to concede——

Mr. CASE: I object to any such statement as the defendants are willing to concede.

Mr. KELLY: The witness is desirous of stating, for the purpose of facilitating this examination, that the defendants are willing to admit that that land now called depot grounds is necessary for the proper transaction of the business at Whitehall. They do not desire to raise any point that it is unnecessary or that they are entitled to any portion of it. They are willing to concede that 5 acres is——

The MASTER: Do you claim any more, Mr. Case?

Mr. CASE: Yes, sir.

488 By Mr. CASE:

Q. What was the population of Whitehall at the time this map was made? Or when was the map made? I will ask you that question first.

A. Possibly, by referring to the map itself as a memorandum, I can answer you. (The witness refers to the map.) It was made in 1873 or 1874.

Q. What was the population of Whitehall at that time?

A. Possibly 250.

Q. What is the population now?

A. Possibly 500.

Q. Don't you know it is 1,000?

A. I do not.

Q. You are positive it was 250 in 1873?

A. In 1873 or 1874, when that map was made, the population was about 250.

Q. What county is Whitehall in?

A. Trempealeau.

Q. Where was the county seat of that county at that time?

A. I think at Neillsville.

Q. Where is it now?

A. I think at Whitehall.

Q. What was the amount of business done at Whitehall station at that time by the railroad?

A. Do you desire it in dollars and cents or tons?

489 Q. In tonnage, or whichever you can state the most accurately.

A. I am unable to state exactly. I have no memorandum at hand to refresh my memory upon.

Q. Do you know of your own information, then, if the business has increased or diminished since that time?

A. The business increased from the time the depot was located there until 1876, possibly. Whitehall was a wheat station. The principal business done at that station is wheat. Some years they have a good crop; some years they have a poor crop. The amount of business done at that station depends entirely upon the nature of the crop which is harvested. My opinion is that as much business was done at that station up to the time I left there as has been done since, on the average, taking the number of years together during which I was general manager. There was a great difference as to the amount of business done at that station. Some years it was three times more than at other years; but we had no year, even the most prosperous years, when those facilities for the transaction of the business of the company were not amply sufficient. Sometimes we found that the warehouse facilities at Whitehall

490 were inadequate for a few weeks in a season, but there was plenty of unoccupied room on those depot grounds to build more warehouses.

Q. With a population of 250, that you think Whitehall had, there must have been very little local business for the town—merchandise, &c.?

A. I think the town, when I left the service of the company in 1877, was as large as it is now. I think there was as many inhabitants when I left the service of the company in 1877 as there are now.

Q. Wasn't there complaints made by people in Whitehall that there was not ample facilities to do the business?

A. There never was complaint made when I was manager. There was a complaint made that the number of wheat buyers at that station was not sufficient. That was something that I did not have any control over.

Q. Didn't they complain that there was not sufficient room for warehouses for them to do the business on at the present time?

A. I cannot state what complaints now are made. There was plenty of room when I was general manager for, possibly, 15 or 20 more warehouses within the depot grounds.

Q. I would like to know the distance from the track to the

491 extreme edge of this depot ground as platted upon the side that the depot and side track is on. Take the diagram and state to me that distance.

A. About 150 feet; 125 feet, I will say.

By the WITNESS: The next station at which any lands are in controversy in this suit is Arcadia.

In regard to that station I desire to testify that the grounds used by the railroad for depot purposes at that station while I was general manager of the company were sufficient for the business of the company.

With no memorandum at hand, I am unable to state the exact number of acres which were used by the railroad company for railroad purposes at that station, but the ground so used was sufficient at that time for the transaction of the business.

By Mr. CASE:

Q. How many acres was there used at Arcadia for depot purposes, for railroad purposes, at the time you left the service of the company?

A. I cannot state definitely, but my impression is about 2½ acres.

Q. How much did you say there was at Whitehall platted out?

A. I think it was about 5 acres at Whitehall.

492 Q. Wasn't there as much business done at Arcadia as there was at Whitehall when you left the service of the company?

A. I think that, on the average, the business at Whitehall was rather greater than at Arcadia.

Q. Isn't it the same class of business—wheat business?

A. It is the same class of business. There might have been some years that more wheat was bought at Arcadia than at Whitehall, but on the average I think the business at Whitehall was greater.

Q. Do you know now whether or not the business at Arcadia is greater than that at Whitehall?

A. I understand that discriminations have been made in freights in favor of Arcadia which has increased the business of that station.

Mr. CASE: I object to that and ask to have the statement in reference to discriminations struck out.

The MASTER: I think the statement in reference to discriminations is incompetent testimony. It is stricken out.

By Mr. CASE:

Q. How many feet is it from the railroad track running through Arcadia to the extreme edge of the ground used for depot
493 purposes upon the side that the depot and side track is? Do you know?

A. I am unable to state.

Q. Do you think it requires as much there as at Whitehall—as much room? Do you suppose a depot would be required to be as large, the side track as large, and the warehouse facilities as large as Whitehall, doing an equal amount of business?

A. If it does an equal amount of the same kind of business it would require as large facilities.

Q. The business at the time you left the road was of the same character?

A. The principal business was wheat business, although at Whitehall there was more local business than at Arcadia; Arcadia being

nearer Trempealeau, the Northwestern road, there was a good deal less competition at Whitehall than at Arcadia.

Q. Is there room for additional space between the side track which was there in 1879 and the hotel which has been lately erected—which juts up to the depot?

A. I have not been at Arcadia to leave the train since that hotel was erected.

Q. When were you at Arcadia last to examine the property or facilities of the railroad?

A. Not within 4 years.

494 Q. Then the railroad company might require double the amount that it had at the time you left the road and you not know it? Could not that be so?

A. My opinion is that the——

Q. Answer my question.

A. No; it could not be.

Q. Could not that be?

A. No; it could not be; it would be impossible.

Q. That will do.

By Mr. ELLIS:

Q. You were about to give your opinion; now, give it.

A. It is my opinion the facilities at Arcadia, which were sufficient when I was manager of the road, are sufficient now for the business.

By Mr. CASE:

Q. You are willing to swear, however, that the land upon which the warehouse stood at that time was necessary for railroad purposes at Arcadia?

A. I am not willing to swear to that at this time.

Q. Then how could the railroad company do the business without those warehouses, if they were going to handle wheat at Arcadia?

A. I presume the warehouses were necessary, but not necessary on that location; they might have been located upon some other

495 portion of the depot grounds.

Q. Weren't they located under your directions? Weren't you general manager of the company at the time they were built?

A. I was general manager at the time of the location of all the warehouses up to 1877, but what may have been located since I cannot say.

Q. These warehouses that were located previous to 1877 were necessary; they were standing upon ground which was necessary for railroad purposes. Are you willing to swear to that?

A. No, sir; I do not swear to that.

Q. Then you located warehouses unnecessarily?

A. No, sir; I don't say that.

Q. What do you say?

A. I say that while the warehouses themselves may have been necessary I will not swear that the grounds upon which they were erected were necessary for railroad purposes, because they might

have been erected somewhere else and been just as serviceable as was the location where they were put up.

Q. Isn't it a matter of fact that you did direct the erection of those warehouses—designate where they should be?

A. No; I think not.

Q. You allowed them to be put up and did business in it?

496 A. They were put up while I was manager of the road and with my tacit consent.

Q. And did business in it?

A. We did business in all the warehouses that was erected when I was general manager of it.

Q. Would you consider that you were looking after the interests of the company in allowing warehouses to be put where they were unnecessary—put yourself to inconvenience and trouble?

A. It was very convenient for it to do its business in all the warehouses that was erected there. My recollection about it is one or two parties desired to put up warehouses on their own grounds and we, having a side track running along in front of their grounds where it was just as convenient for us to take grain as if the houses was on our land, we allowed them to build warehouses where they desired.

Q. Wasn't that ground upon which they erected them ground in which you had an interest originally?

A. I think not.

Q. That was not a part of the ground that a conveyance was made by Dr. Wood to yourself and Hiles?

497 A. No, sir; not all of it.

Q. Some of those lands were?

A. Some of those lands were.

Q. Then they were necessary?

A. The warehouses themselves was necessary for the business of the company, but the location of the warehouses was not necessary.

Q. If it was unnecessary to put them in that location where would you put them?

A. I think I should put them, if I was to have any other location, I believe I should put them east of the depot building.

Q. Is there any room there?

A. I think there is.

Q. East of the depot building?

A. East of the depot building.

Q. Aren't they east of the depot building now?

A. No; I think they are west?

Q. There are no warehouses east?

A. There were no warehouses east when I left the company.

Q. Don't you know that there are?

A. No, sir.

Q. If there were warehouses erected east of the depot along side the track they were necessary?

A. Unnecessary.

Q. Where would you put them? You wouldn't put them upon the west and you wouldn't put them upon the east?

498 A. In the first place, the warehouses may not have been necessary of themselves.

Q. You testified that they were necessary?

A. I testified that all the warehouses at the time I left the road were necessary.

Q. Warehouses was necessary for the transaction of the business?

A. Yes, sir; sometimes; sometimes not.

Q. If warehouses were put upon the east side of the depot would they be necessary. If the business was sufficiently large would the ground be necessary?

A. No.

Q. Then, in your opinion, there is no necessity of having any warehouses there at Arcadia?

A. I am not of that opinion.

Q. I want to ascertain what your opinion is. I asked you whether the warehouses were necessary where they were erected, and you said no; that you would put them on the east side of the depot. I asked you now if they were put upon the east whether it would be necessary for railroad purposes, and you said no. The logical effect of your answers would be that there would be no warehouses necessary at all.

A. I should have to deny that that is the logical effect of my answers.

499 Q. I would like to have some explanation, then.

A. I am willing to answer any question which is proper for you to ask.

Q. You have so far stated that the warehouses upon the west side was unnecessary.

A. I have not stated anything of that kind.

Q. And the warehouses upon the east side was unnecessary; I understood you so.

A. You did not understand me correctly.

Q. I see you are determined to trifle, so I won't examine you any further.

Mr. CASE: Mr. Reporter, just take down my remarks, that the witness is evidently trifling and not willing to answer my question.

Mr. ELLIS: I don't want that put down.

The MASTER: That is not proper to be put down.

Mr. CASE: I ask to have that remark taken down, subject to objection and exception.

The MASTER: The special master sees no evidence of any such disposition on the part of the witness, but will leave the record, at the request of the counsel, as it now stands.

Mr. ELLIS: That is all now; I may have to recall Mr. Kelly before the end of the case.

Mr. CASE: I insist that he be fully examined now.

The MASTER: I suppose you mean that you will recall him

500 in case some new points are made.

Mr. ELLIS: Some further testimony in regard to the amount of the business done on the road. We wish to give him an

opportunity to examine some information and give his opinion upon that.

Mr. CASE: We object to his being called again unless there is some evidence introduced on the part of the complainants which needs rebuttal.

The MASTER: You wish to recall him upon what point?

Mr. ELLIS: Mainly that the business of the road was not sufficient for depot purposes more than he describes.

The MASTER: You may recall him for that purpose.

JAMES T. ALTON was called as a witness upon the part of the defendant-, who, being sworn, testified as follows:

Direct examination by Mr. ELLIS:

Q. Where do you reside?

A. In Green Bay.

Q. What is your business?

A. Civil engineer.

501 Q. How long have you been a civil engineer?

A. 12 years.

Q. Your age?

A. 40.

Q. What experience have you had in railroading, if any?

A. I have had some experience.

Q. State what it is, generally—just as brief a statement as you can make.

A. I was engineer of the Green Bay & Minnesota road from 1873 to December, 1877, I think it was, with the exception of about 6 or 8 months in 1875.

Q. Have you been an engineer at any other point?

A. Yes, sir; not in the same capacity I have been in this.

Q. State what your experience has been as a railroad man.

A. In the location and building of what is now known as the Indianapolis, Bloomington & Western, in the location and construction of the Florida Central, in the location and construction of the Raritan & Delaware Bay road in New Jersey; I believe that is all.

Q. Did you make a survey of the depot grounds for the Green Bay & Minnesota railroad at Manawa?

A. I did.

502 Q. (Shows the witness the map marked Exhibit C.) State whether or not you made that map, Exhibit C.

A. Yes, sir; I made this map.

Q. State whether or not that is a correct description of the depot grounds at Manawa.

A. I believe it to be so—of the depot and the right of way.

Q. Of the depot and the right of way?

A. Yes, sir; included in the plat is the depot grounds and the right of way?

Q. Did you make the survey yourself?

A. I did, sir; yes, sir.

Q. And you made that map yourself?

A. I did.

Q. State whether or not it was sufficient for the purposes of the company at that time.

A. I am not able to state.

Q. For the business of the company; what is your opinion about it?

Coun. for pl't'ff objected.

A. I am not an expert on that business.

Q. How many acres in that piece?

A. You mean the entire piece?

Q. Yes.

A. About 6¼ acres, or, more particularly, 6 acres and $\frac{27}{100}$.

Q. You said that you made this plat and that it is correct?

503 A. Yes, sir; I made the plat and made the survey.

Q. And this is a correct description of the depot grounds at that point?

A. I believe it to be so.

Q. Did you make it from personal examination and measurement?

A. Yes, sir; myself and about two assistants—three assistants.

Cross-examination by Mr. CASE:

A. The map is dated in September, 1875; it was about that time. I can't tell just exactly when.

Q. While you were in the service of the company?

A. Yes, sir; while I was in the service of the company.

Q. You have spoken about your connection with the Green Bay road. What was your position upon the Green Bay road?

A. Engineer.

Q. Civil engineer?

A. Civil engineer.

Q. Have you ever been engaged in the operating department?

A. No, sir. What do you mean by operating department?

Q. In regard to the operation of the road after it was built.

A. No.

504 Q. Have you ever held such a position upon any road? Have you ever been connected with the operating department of any railroad?

A. Well, will you define a little more clearly what you mean?

Q. That which relates to the traffic, to the management of the cars, and the management of the rolling-stock and the obtaining of business.

A. No; never.

Q. You never have?

A. No, sir.

Q. You simply have been an engineer?

A. I simply have been an engineer for locating and constructing railroads.

Q. Then you would have no knowledge whatever as to the operating part after the railroad was built?

A. I don't consider myself an expert in that matter at all.

Q. Did you make all those maps which have been introduced in evidence by Mr. Kelly?

A. They are not all made by me; they were all made by my supervision.

Q. They were all made under your supervision?

A. Yes, sir; in the office.

Q. At the time you became connected with the road how far had the survey of the road been made?

505 A. To Merrillon.

Q. To what point did you make the survey?

A. From Merrillon to the Mississippi river, and also the La Crosse extension.

Q. This part that you are testifying of you didn't make the survey?

A. I didn't make the survey of the *linement*.

Q. But simply as to the depot property?

A. But simply as to the depot property.

Q. Did you plat out any land besides the depot land?

A. I don't know what you mean by depot land.

Q. Outside of the depot ground did you plat any of this property into lots?

A. Yes, sir.

Q. While you were engaged in the employ of the company?

A. Yes, sir.

Q. At all the stations, did you not?

A. No.

Q. What stations did you plat out?

A. I platted some near Manawa separate from the right of way and the depot.

Q. What else?

A. And a piece at Seymour.

Q. Did you plat any at Black Creek?

A. No, sir.

Q. Did you plat any at Merrillon or have any of your assistants do it?

506 A. No, sir. At Merrillon? No, sir; nor Black Creek.

Q. Nor Black Creek?

A. No, sir.

Q. Did you plat any land in the valley, or was it done by your directions?

A. An engineer may act as an engineer and a surveyor.

Q. I understand that. I want to know whether you platted any land outside of the depot property at these different stations.

A. What you mean by platting is by a village or town?

Q. Yes, sir; did you do that?

A. I did not.

Q. Who had charge of that?

A. No one in particular.

Q. You did at the stations you named?

A. I did at the stations I named.

Q. What were they?

A. At Seymour I platted a piece of ground; at Manawa I platted a piece of ground.

Q. And those only?

A. That is all I remember; possibly one more, but I don't remember.

Q. Which one was it that you don't recollect?

A. If I don't recollect I couldn't state.

Q. Try and recollect.

A. No, sir.

507 Q. You say you became engineer after the road got to Merillon; didn't have anything to do with the location of town lots after you left Merrillon?

A. No, sir.

Q. Or any of your assistants?

A. Never. You know that was outside of my jurisdiction.

Q. Do you know of your own personal knowledge whether they did or not?

A. I know that Mr. Hoffman—at least I don't know, but I think so—platted Whitehall and Arcadia—that is, a portion of it, but other surveyors made an addition to it.

Q. What was Mr. Hoffman doing at that time?

A. Mr. Hoffman at different times was employed by me as assistant engineer. Whether he was at that time I don't remember.

Q. Are you certain he was not?

A. I don't think he was.

Q. You don't think he was?

A. Because the services of the whole force of assistant engineers was not necessary the whole time.

Q. How was it about his being in the employ of the company? Was not Hoffman upon the pay-roll at the time he made this plat *ment* of this property?

A. I don't think he was.

508 Q. Do you remember the time that he platted this property at Arcadia and Whitehall?

A. I think it was somewhere after we finished building into Winona.

Q. When was that?

A. It must have been the spring or summer of 1874.

Q. You think in the spring of 1874 Mr. Hoffman platted out Arcadia and Whitehall?

A. Yes, sir.

Q. In your opinion he was not upon the pay-roll.

A. I don't think he was.

Q. He had been acting as your assistant?

A. Yes, sir; at different times.

Q. Had he afterwards?

A. Yes, sir; on the La Crosse extension afterwards.

Q. All these plats introduced in evidence were either made by yourself or parties working under your directions—parties working on the road?

A. Yes, sir. That needs an explanation; here is one: Whitehall, for instance. Now, my impression is that Mr. Hoffman was the original surveyor who laid out a portion of Whitehall. This map represents a resurvey of the depot grounds at that point and
509 embracing and showing the contiguity or connection with the plat of the town. This, of course, I didn't do—that is, I retraced it.

Q. This was taken from the original platting?

A. Yes, sir.

Q. There was no actual second survey made then?

A. No, sir.

Q. Simply a sketch of the original plat?

A. Simply a sketch.

Q. That you think was made by Mr. Hoffman (indicating on the map)?

A. That I think was made by Mr. Hoffman.

Q. But that you yourself made (indicating on the map)?

A. That I myself made.

Redirect examination by Mr. KELLY:

Q. You are not certain, or are you certain, that Mr. Hoffman platted any of those village plats—either of those village plats?

A. I don't assert that as absolute knowledge; that is my impression, my recollection. I think he did.

Q. You are not certain?

A. I am not certain; no, sir.

Q. Do you know whether or not an engineer by the name of Paul Heising made plats at different times down through Trempealeau Valley?

510 A. The name is familiar to me, and I believe Mr. Heising made an addition to Arcadia, for instance, or platted some of the town of Arcadia and possibly Dodge, but I don't know; I can't tell as regards that. I remember the name and I think I met the gentleman.

Q. Was Mr. Heising in your employ?

A. No, sir.

Q. Never was one of your subordinates?

A. No, sir.

By Mr. ELLIS:

Q. Did you make the plat of the depot ground at Merrillon? (Shows the witness the diagram marked Exhibit D.)

A. Yes, sir; I drew this plat.

Q. Is that a correct description of the depot ground at Merrillon?

A. I believe it is; there are some little interlineations here.

Q. Is this the whole of it?

A. Yes, it is in two forties.

Q. You made the survey yourself and wrote out the description yourself?

A. Yes, sir.

Q. And know it to be correct.
A. I believe it to be correct; it was intended to be so.

Recross-examination by Mr. CASE:

511 Q. From what did you make the survey at Merrillon; what notes did you have?
A. I tied it onto the central line of intersection.
Q. You made your survey from the center line?
A. From the center line I made—just took it from the plats that I obtained there.
Q. Was that made according to Government sections?
A. Yes, sir.
Q. That is located correctly according to sections?
A. In that country the sections were a little wild, and you see here a little change has been made. As near as I can make it, I believe it is tied to the center line of the railway, because that is considered a fixed point; in other words, to have two descriptions.
Q. That was surveyed more particularly in regard to its connection to the railroad line, and not in regard to sections?
A. Believing——
Q. That is, was the survey made by you so that you could describe it by sections without reference to its location near the railroad?
A. Yes, sir; but not so certain as to the location of the forty lines as I was regarding—there was some disputed corners there and the village plat of Merrillon was not a very good one; not considered a very correct one.
Q. All the deeds which have been introduced in evidence are deeds which go by sections?
512 A. I don't know anything about that.
Q. And your surveys have been made in regard to the location of the line particularly?
A. No, sir; they take in Government subdivisions.
Q. And yet you are not willing to state that they are accurate?
A. I wouldn't swear positively that they are accurate, but I believe them to be accurate, as near as I could get them from the data I had of the Government lines.
Q. Then you made them from the Government notes—made the surveys from the Government notes?
A. No; from the resurveys made by the surveyor who laid out Merrillon town, the data that he had.
Q. I notice that you have made a map of each station of land which is marked depot grounds. Under whose direction did you make that survey?
A. Under Mr. Kelly's.
Q. Who dictated to you how much land should be taken for depot grounds?
A. Well, it was a matter of conversation between us.
Q. Between yourself and whom?
A. Mr. Kelly. I think Mr. Kelly was invited to speak of it; also Mr. Ketchum.

513 Q. Then the lines were shown to you and you made your survey accordingly, did you not?

A. Not absolute.

Q. Not absolute?

A. No, sir.

Q. Did you have any discretion in the premises whatever?

A. I don't know as it was acknowledged, but then I expressed my opinion in regard to it.

Q. Did that opinion have any weight at all?

A. It is so remote I cannot recall the conversation.

Q. Don't you know that you made your survey according to the directions given you by the manager? Is not that the custom always?

A. Yes, sir.

Q. You know that to be the custom?

A. Now, a man's opinion may be asked if his judgment is considered good.

Q. I understand you are an engineer, a competent engineer, and come on here and testified in regard to your own connection with other railroads. I ask you whether you don't know it to be the custom that the manager always dictates to the engineer what shall be laid out as depot property?

A. Usually I suppose it is so. An engineer doesn't consider himself, unless he has had experience outside of his profession, to be an expert in depot grounds; I am sure I do not, although

514 I may have an opinion.

Redirect examination by Mr. ELLIS:

Q. You say that the description of these depot grounds, the extent of it, was talked over between yourself and Mr. Kelly, Mr. Kendrick, and Mr. Ketchum?

A. They were at a time before I made these surveys—that is, those that were not defined before I took up the subject was talked over between myself and Mr. Kelly, and I think Mr. Kendrick was in there a portion of the time.

Q. What was Mr. Kendrick—what was his position on the road?

A. Mr. Kendrick was superintendent of the railway, and supposed to know what the wants of the railway were in regard to grounds.

Q. I thought you said Mr. Ketchum was there?

A. I don't say at that time, but I think Mr. Ketchum had some voice in the matter.

Q. Do you recollect whether he was president of the company at the time—Mr. Ketchum?

A. I think he was.

Q. Mr. Kendrick was superintendent?

A. Mr. Kendrick was superintendent.

Q. State whether or not they all agreed upon these depot grounds.

515 A. I never heard of any disagreement.

Q. All satisfied, as far as you know?

A. As far as I know; yes, sir. As far as I know the depot grounds were considered adequate at the time.

Q. State whether you made the survey of these depot grounds at Whitehall.

A. I retraced that survey.

Q. Did you state whether or not this was a correct description of the depot grounds there?

A. I believe it to be so.

Adjourned until 2 o'clock p. m.

2 O'CLOCK P. M.

Parties met pursuant to adjournment.

D. M. KELLY was recalled as a witness upon the part of the defendant, who testified as follows:

Direct examination by Mr. ELLIS:

Q. You may state the facts in respect to the depot at Merrillon affecting the lands there. State what facts you desire to state.

A. While I was constructing and managing the Green Bay & Minnesota road the grounds which have been alluded to at Merrillon as being depot grounds were in the interest and used by the Green Bay & Minnesota Company. The other road making
516 a junction at that point with the Green Bay & Minnesota had no land whatever.

Mr. CASE: I object to that as irrelevant, and moved to strike that out. It is not a question for this court to determine anything about what other roads own.

Mr. ELLIS: We want to show that all the companies used this same land that is in controversy here.

The MASTER: Go on.

By the WITNESS: The land shown in the diagram as being the depot grounds in Merrillon were used by both companies, and were ample at the time I was there for the use of both companies, and I am of the opinion that the lands so described are sufficient or more than sufficient to-day for the business of the Green Bay & Minnesota. As a matter of fact, when I was manager of the road the lands described in that diagram were used by both companies, and were sufficient for both companies. The Green Bay & Minnesota did less than half of the business at the railroad station, and these lands were sufficient for both companies, and were used by both companies.

By the MASTER:

517 Q. Is it your judgment that the lands that are described in that map are sufficient for the use of the Green Bay & Minnesota Railroad Company for their uses for depot grounds?

A. I desire to say that they were sufficient when I was manager for the use of both companies, and I am of the opinion to-day that they are sufficient for the use of the Green Bay & Minnesota for the transaction of its business.

Mr. CASE: I move to strike out all the testimony which relates to any railroad company except the Green Bay & Minnesota.

The MASTER: It is denied.

By the WITNESS: I would like to add at that time that the other road making the junction at Merrillon used no other lands at that point, either for their local business or for the joint business of the other company, except these lands set forth in this diagram referred to.

Mr. ELLIS: That is all.

Cross-examination by Mr. CASE:

Q. How are you able to tell at a junction where an interchange of business is carried on between two different roads how much is necessary for one road and how much is necessary for the other road. Isn't it a matter of fact that all that is necessary for any one is necessary for the other?

518 A. The side tracks owned by the Green Bay & Minnesota were used by the other railroad. At the time I was manager of the company the depot—the passenger depot——

Q. That is not answering my question.

A. The freight depot was used by the other company.

Q. Wern't that used by the Green Bay & Minnesota?

A. Yes, sir.

Q. The side tracks also?

A. Yes, sir.

Q. In an interchange of business don't cars have to pass from one road to the other?

A. I think that was necessary, so far as the car change is concerned.

Q. What interest did the other railroad possess, at the — you left this Green Bay road, at Merrillon, except that of mere renters—that is, paying so much for the use of the station—paying so much of the running expenses of the station?

A. That was the only interest they had at that time.

Q. Then all the business was for the Green Bay road, although there might be cars of the other road. Is that so?

519 A. Not all the business of the Green Bay & Minnesota.

Q. How are you going to distinguish between the amount of business the Green Bay road does and the amount that the other road does, if there is an interchange of business from one road to the other?

A. The separate accounts of the two companies would show very clearly what was the amount of business of each company.

Q. Don't you know as a railroad manager that every car that comes off of that road and goes onto the Green Bay road gives business to the Green Bay road, and every car that goes from the Green Bay road to the other road is business belonging to the Green Bay road as well?

A. Yes, sir; and I also understand that——

Q. Don't you know, further, that all business that may be trans-

acted upon the property at Merrillon by the other company is really bringing business to the Green Bay as well?

A. I do not understand it so.

Q. What business is transacted at Merrillon in which the Green Bay has no interest?

A. A man buys a ticket to St. Paul and goes over the St. Paul; that is clearly not Green Bay business. A man ships a
520 car-load of lumber to St. Paul, shipped over the West Wisconsin; that is clearly not Green Bay & Minnesota business. A man receives from Chicago a lot of merchandise at Merrillon from the West Wisconsin; that is clearly not Green Bay & Minnesota business.

Q. I want to know whether that business goes upon any of the side tracks.

A. It did when I was there.

Q. Doesn't it go upon the main track of the Omaha road, that which you concede belongs to this company?

A. At the time when I was there the tracks were used by the Green Bay & Minnesota as a side track.

Q. Doesn't the Omaha road own the right of way through there?

A. It owns a portion of the right of way. At the time I left the company, I think it hadn't acquired all the right of way.

Q. If a man want's to buy a ticket to St. Paul, doesn't it use the facilities of the Green Bay road?

A. When I was manager of the road he went into the Green Bay & Minnesota and bought his ticket there.

Q. Then the Green Bay & Minnesota had the use of that depot?

A. The other had the use of it.

521 Q. But still it belonged to the Green Bay & Minnesota?

A. The other had the use of it.

Q. Isn't that depot necessary for the railroad purposes of the Green Bay & Minnesota?

A. A small depot might have answered the purpose.

Q. Isn't that depot just as necessary for the use of the Green Bay road as it is of the other road?

A. I suppose it was.

Q. Isn't the side tracks necessary for the Green Bay & Minnesota?

A. No; I don't think some of the tracks are.

Q. Then you think there is business transacted on those side tracks for which the Green Bay get no proportion?

A. I have no question of that; that was the case when I was managing the road.

Q. Still, if there are cars shipped on those side tracks belonging to the Green Bay then you would think it was necessary for the Green Bay road, would you not?

A. It might not be necessary to have as long side tracks if the Green Bay was only doing business there.

Q. The mere fact that they are doing business with another road don't, in your opinion, affect the question of the amount of ground that they need?

522 A. I think that is the case.

Q. Then you don't think that the business that they do for another road, that it is necessary to have land to do that upon?

A. I don't think it is a proper part of the legitimate business of the road.

Q. That is all.

Mr. ELLIS: That is all the witnesses we have now, except what is to be rebuttal.

The MASTER: The case is with you, Mr. Case.

Mr. CASE: I am not ready to go on to-day and ask for an adjournment to get my testimony.

Mr. KELLY: We wish to be understood that we have not rested our case if the case does not go on now.

Mr. CASE: We shall object to any more testimony being introduced by the defendants after they have rested.

The MASTER; I will rule upon that when the testimony is offered.

The hearing adjourned until Wednesday morning, November 16th, at 9 o'clock, at Cooke's Hotel, in Green Bay.

JAMES H. HOWE,
Special Master.

523 NOVEMBER 16TH, 1881.

Taking of testimony resumed, pursuant to adjournment, before Hon. J. H. Howe, commissioner.

By Mr. CASE: I understand the testimony upon the behalf of Mr. Kelly is closed.

The MASTER: He said he rested his case. He gave notice that he should make an application.

By Mr. CASE: Mr. Kelly does not appear to make any application at this time. We would like to have an order of the master entered.

The def't- then called as a witness GEORGE HILES, who, being duly sworn, testified as follows:

Direct examination by Mr. ELLIS:

Q. You are one of the defendants in this action, I believe?

A. I am; yes, sir.

Q. Did you have anything to do with the building of the Green Bay & Minnesota railroad?

Coun. for complainant objected.

A. Yes, sir,

Q. At the time it was originally built?

A. Yes, sir.

Q. In what capacity did you act?

A. Contractor.

524 Mr. CASE: We object to that line of questioning and would like to have it stricken out.

The MASTER: You can go on.

By Mr. ELLIS:

Q. You mean principal contractor or subcontractor under Mr. Kelly?

A. I was subcontractor under Mr. Kelly.

By Mr. CASE: I move to strike that out as wholly irrelevant.

By Mr. ELLIS: It is a preliminary question to show he had some knowledge.

By Mr. CASE: The records show that.

The MASTER: Go on.

By Mr. ELLIS:

Q. Have you had any other experience in building railroads besides what you had on this road?

A. No, sir.

Q. How long were you occupied on that?

A. How long was I constructing it?

Q. How long were you engaged in the construction of that portion of this road that you did build?

A. Commenced in the spring of 1872 and got through constructing in the fall of 1873.

Q. Where have you resided since 1872?

A. At Dexterville, Wood county, Wisconsin.

Q. Is that on or near this road?

A. Yes, sir.

Q. On this road?

A. Yes, sir.

525 Q. Have you traveled on this road much since that time from Green Bay to Winona?

A. Yes, sir.

Q. State whether or not you have every year since that time.

Coun. for complainant objected.

A. Yes, sir.

Q. How often?

Coun. for complainant objected to all that line of questioning; I think I have a right to ask a ruling upon that.

The MASTER: I will admit the testimony.

A. Well, quite often; once or twice a month, and sometimes oftener; 3 times a month.

By Mr. ELLIS:

Q. Have you noticed during the time when you have traveled over the road the business done by the road?

A. Yes, sir.

Q. Had occasion to observe what amount of business was done?

A. I have.

Q. Will you state whether there has been any increase of business since 1873—since that time?

A. I think the last year or two there has been an increase of business.

Q. Has it been much; what proportion in your judgment?

526 Objected to. The witness has not shown any knowledge yet. Objection overruled; to which complainant excepted.

A. Well, I should say—of course I can't tell; I have no way of telling, only by observation—I should say the increase has been, the last 2 years, a quarter.

By Mr. ELLIS:

Q. Well, have you noticed the various depot grounds along the line of that road?

A. I have.

Q. Since the road was built?

A. I have.

Q. Will you state whether or not the depot grounds which have been used and occupied by the company during that time are sufficient for the business of their road?

A. I think they were amply sufficient up to this time.

By Mr. CASE: Enter my objection to the question and answer. The witness has failed to show he knows anything about the business.

By Mr. ELLIS: Look at this map of Merrillon Junction.

By the MASTER: Is that the map you had before?

By Mr. ELLIS: This is a copy of the map we had before. This is traced from the other map. My map of Merrillon was one of
527 the original exhibits, and I ask that they ought to produce it, because it belongs to the master in chancery. It is the master's property now.

By Mr. CASE: I have sent for it.

By the MASTER: There is no objection to our considering this?

By Mr. CASE: Not at all.

By Mr. ELLIS:

Q. I suppose this to be a proper tracing. Will you examine the depot grounds at Merrillon—the depot grounds of the Green Bay & Minnesota Railroad Co.—and state whether or not they are sufficient for the business of the road?

A. They have put in this summer——

By Mr. CASE: I would like to have you note right here that we claim the title to these maps that have been introduced in evidence by these defendants.

A. This represents the depot grounds, as I understand it.

Q. State whether it does or not, according to the best of your knowledge.

A. Well, it does, according to the best of my knowledge. This is the Y that comes in here from the Green Bay road to the West Wisconsin. They have always had plenty of room there until this summer—until the latter part of the summer. They have put in
528 a "Y" from here somewheres; I don't know exactly the

point—running around up through here. You can see what capacity there was to that for the amount of business they had.

Coun. for complainant objected.

WITNESS: There is a road that comes from here up to Neillsville, and they have run from the track—this track across into that—which is all proper enough, probably, to go into this road.

The MASTER:

Q. The railroad you are speaking of?
A. Yes, sir.
Q. To another railroad?
A. Yes, sir; comes from here—starts about here, I should say; runs off up to Neillsville. They have put a track from this Green Bay road into that—into here somewhere; then they are putting in a "Y," starting away down here somewhere on this road and coming in here; I can't see any need of it or any use of it.

By Mr. ELLIS:

Q. State whether or not it is necessary.
A. It don't look to me necessary; I should say it was not necessary for the business.
Q. State whether or not that is sufficient for the business of the company. I speak with reference to this road only, not the business of all the roads there.
529 A. It is well enough to have this "Y" in—this to the West Wisconsin road here—and that would be all that was necessary. There was no necessity for that Y there, as I could see, only to take in the land.

By the MASTER:

Q. Does this Neillsville — connect with the West Wisconsin?
A. Connects with the West Wisconsin right here?
Q. And a side track in from the Green Bay road connecting from the Green Bay road into the Neillsville ro ad?
A. Yes, sir; I wer'n't out to where it connects; I saw it from the Green Bay road.

By Mr. ELLIS:

Q. When was the Neillsville road built; what is the name of it?
A. It belongs to the West Wisconsin, as I understand it.

Objected to.

Q. When was it built?
A. Built about a year ago.
Q. How much land was taken in by that Y to which you referred a moment ago, and on which side of the West Wisconsin would that be?
A. This would be on the west side of the depot there at Merrillon; this is west. I don't know how much land.

530 Q. How much land in addition to this track would be taken up?

A. I made no measurements. I know nothing about it only by just looking at it. I should say it started in about there; that would be, according to my understanding, about 60 rods from this track; perhaps not quite as far; I should say, at an estimate, 60 rods; then running around up in —. It may come down as low as that.

Q. Right over the same land?

A. Yes, sir; over this same ground here—a part of it, I should say; but it might run clear around it.

Q. You don't know whether it does or not?

A. I don't know whether it does or not; I made no measurements; all I know about it is by looking at it. They have done a great deal of work there putting in "Ys" and side tracks at Merrillon since July; they have been doing a great deal of work—vast amount of work.

Q. July, what year?

A. This year.

(Objected to.)

Q. Do you know whether it is since the decision in this suit or not?

A. It is.

531 Q. What answer do you make generally to the question as to whether that track and depot grounds is sufficient for the purposes of this road, speaking of this road only and not the West Wisconsin road?

A. I should say that those two "Ys" would be all that would be necessary. My understanding of the amount of business that is done — that they would be ample; as I said before, it would be necessary to have a Y from the Green Bay road over to the Neillsville road that comes in here. I couldn't see for the life of me what they want this Y running down here for.

Q. I believe that is all I care to ask him.

By Mr. POWERS: I don't think I shall introduce any testimony relating to those 2 towns until we hear from the other side.

The MASTER: Any questions, Mr. Case?

Cross-examination by Mr. CASE:

Q. What was your business in connection with the railroad?

A. I was contractor part of the time under Mr. Kelly.

Q. A contractor under Mr. Kelly?

A. Yes, sir.

Q. Did you hold any other position on the road?

532 A. Did I have any other position?

Q. Yes.

A. No; I never was no officer of the road.

Q. Did you state this is the first railroad you have been connected in any way with?

A. This is the first railroad I ever had anything to do with.

Q. Ever been engaged in the operation of a road?
A. No, sir; never was.
Q. You say that you think the business has increased somewhat—at what points did you say?
A. The amount of business has increased—that is, the business that I speak of; it is lumber business, running from Grand Rapids and probably from Neillsville, east of Grand Rapids, through eastward; that is the business I spoke about increasing. I don't think the wheat business has increased.
Q. You don't refer to Arcadia or Blair or Merillon?
A. The business has not increased to Arcadia any for the last 2 or 3 years.
Q. You have been there all the time?
A. Off and on, all the while.
Q. Every day?
A. Not every day; no.
Q. Where else have you been within the last 2 or 3 years?
533 A. I have been to La Crosse and I have been to Dexterville, and I have been along on the line of the road—Milwaukee and Chicago and out to Colorado.
Q. Have you ever examined the books of the company at those points?
A. No, sir.
Q. Where do you live?
A. I live *to* Dexterville.
Q. How far is that from Arcadia?
A. Probably 80 miles; 82 miles.
Q. Are you at Arcadia every week?
A. No, sir.
Q. Wasn't there months elapsed when you would not be there?
A. No, sir. I am there once a month.
Q. Once a month, you think?
A. Yes, sir; and sometimes oftener.
Q. You think you are able to testify about the amount of business?
A. Yes, sir; and what I know about the business is asking the agent and asking how things were running from time to time.
Q. Do you suppose the agent would tell you?
A. A man that is as well acquainted with me as he was I suppose would be very apt to tell.
Q. Then you base your knowledge upon statements made
534 to you, whether they are correct or not?
A. Yes, sir; I know there is a good deal of wheat going to Fountain City.
Q. Answer my question.
A. You asked me how I knew; I thought I would tell you.
Q. You are giving your sworn testimony upon certain statements made to you by parties, which statements you don't know whether they are correct or not?
A. All I know about the correctness of it is my own observation.
Q. Observation that you had once a month, you say?
A. Well, I was on the road oftener than once a month.

Q. Used to count the cars, did you?

A. No, sir; not necessarily.

Q. You never made it your business to inquire as to the amount of business the road was doing, did you?

A. No; it wer'n't necessary. I could tell by looking at the trains.

Q. You could tell from looking at the trains where the cars came from, could you?

A. No, sir; tell how many cars there was on it.

535 Q. Suppose you saw a number of cars on a train, how could you tell how many cars came from Arcadia? What way would there be for you to tell it?

A. I know the business at Arcadia, because I asked the agent, and I know the wheat wer'n't coming in, and the agent told me.

Q. You told me you told the business from the looks of the trains. Now, I want to know how you could tell what cars came from Arcadia or Blair or Merrillon.

A. Seeing trains at Dexterville, a hundred miles east of there, I couldn't tell, but if I was there at Arcadia I could tell, where the cars went from there.

Q. Arcadia might some months do 3 or 4 times the amount of business it did the year previous and you not know it?

A. I don't hardly think it could, and I was always asking the business men what they were doing. That is where I got my information.

Q. Simply a matter of conjecture with you—a guess?

A. Well, it is a guess I arrived at by asking the business men—that is, shipping wheat, getting in lumber; I was a lumberman myself.

536 Q. Didn't you regulate the amount of business you thought the road was doing from the amount of business you were doing?

A. Oh, no, sir.

Q. That is not the way you determine it?

A. Not at all.

Q. You have not been engaged in the operation of any railroad at all, you say?

A. No, sir.

Q. You are positive you were a subcontractor under Mr. Kelly, are you?

A. That is my understanding of it.

Q. Is all your testimony as correct as that?

A. Well, I consider that is as correct as the rest of it.

Q. If that would not be correct you don't think the rest of it would be correct, then. You would not swear to one thing which was not so and leave the rest true, or is it all true?

A. I don't understand the meaning of that question.

Q. I asked you whether you were willing to swear positively you were a subcontractor under Kelly.

A. I am willing to swear positively that is my understanding; I took the contract from Mr. Kelly.

Q. You never signed any contracts with the company?

537 A. No; I ain't positive but it was with the company. Kelly signed it as the company. I ain't positive; I ain't got the contracts, but my understanding was I was doing it under Mr. Kelly.

Q. I don't say there is any contract, but if there were a contract introduced executed between you and the company, would you be willing to confess you were not a subcontractor under Mr. Kelly?

A. I would not, because I admit that I was doing the business with Mr. Kelly. He may have signed the contracts as the company. Mr. Kelly might have signed the contract as the company and Mr. Ketchum, but I understood Mr. Kelly had the contract and was running it.

Q. You generally know what you sign?

A. Yes, sir.

Q. Suppose a contract was introduced here, where Mr. Kelly was not a party at all, between yourself and the company, would you be willing to swear you were a subcontractor under Mr. Kelly?

A. I would be willing to admit I signed the contract if I did, but I should not admit but it was my understanding I was subcontractor under Mr. Kelly. I understood Mr. Kelly was doing the work.

538 Q. In the face of such a contract would you be willing to swear you were a subcontractor under Mr. Kelly, notwithstanding you made the contract with the company?

A. I tell you——

Q. Answer my question.

A. That is my understanding.

Q. I say in the face of a contract between yourself and the company would you be willing to swear you were not a contractor with the company, but a contractor under Mr. Kelly?

A. If I signed a contract with the company, as far as signing the contract was concerned, it would be with the company, but I understood Mr. Kelly was doing this.

Q. You don't understand instruments you are signing—nothing about the contents? That is your habit as a business man, to sign instruments you know nothing about?

A. I don't generally do that.

Q. Still you swear you were a subcontractor under Mr. Kelly?

A. I have not sworn to that. I want you to understand this, that it was my understanding I was a contractor under Mr. Kelly.

Q. If that is not reliable, than your other testimony is not reliable.

Objected to as an improper question.

539 The MASTER: I think it is a proper question.

By Mr. CASE: I shall insist upon an answer; I want to show whether this witness is reliable at all or not.

Q. You say this "Y" to the Neillsville road is unnecessary in your opinion?

A. I didn't say so.

Q. What did you say?

A. I said it might be necessary.

Q. It might be necessary?
A. Yes, sir.

By Mr. ELLIS: Which one are you inquiring about?

By Mr. CASE:

Q. The Y connecting the Green Bay road with the Neillsville road. What was this Y you referred to you thought was unnecessary—the contemplated Y?
A. It was the Y that was starting down on the West Wisconsin road, south from the depot about 60 or 80 rods.
Q. Down near the school-house?
A. Yes, sir.
Q. And from there where does it run?
A. I don't know; I didn't see it.
Q. How are you able to swear it is unnecessary?
A. I swear I don't think it is hardly necessary for a Y to be put in there; I don't swear positively. They are putting one in
540 there, but there was some men down there that I was told, when I came by there a few days —, they were to work on the Y pointed out to me.
Q. Do you know anything about the business of Merrillon; are you a shipper at that point?
A. No, sir.
Q. You don't do any business at Merrillon, do you, at all?
A. No, sir.
Q. Do you know anything about our relations with the other company—the Omaha Company?
A. No, sir.
Q. Do you know anything about the amount of interchange of business between the two roads?
A. No, sir; I know nothing about the business of the road.
Q. How are you able to swear if that Y was put in there it would be unnecessary, as long as you don't know anything about it?
A. On general principles; on the amount of business the road is doing; the amount of cars run over the road.
Q. You said you didn't know anything about the amount of cars that was interchanged between the two roads. How can you
541 come on the witness stand and take your oath that you know what is necessary at Merrillon and what is not right in the face of your statement you don't know anything about it?
A. I base my judgment on my knowledge of the amount of cars that is run over the road.
Q. How near is your hotel to the depot at Arcadia—the one you recently erected?
A. Well, I should say it was about 40 feet—40 or 50.
Q. About 40 feet from the depot?
A. Yes, sir; I should say so, at a guess.
Q. There is a side track runs between the depot?

By Mr. POWERS: Is this cross-examination?
By Mr. CASE: Yes, sir.

Q. There is a side track runs between the depot and the hotel, is there not?

Objected to as not cross-examination.

The MASTER: I don't see how it is cross-examination.

By Mr. CASE: He has testified to the amount of land necessary at different points.

The MASTER: If you prepare the way quite likely it might be.

By Mr. CASE: I understand he has already testified as to the amount of land that is necessary.

The MASTER: He has not testified as to that point, or at least I have not so understood him.

542 By Mr. CASE: I am through with you.

Redirect examination by Mr. ELLIS:

Q. Look at this map once more. State when the Y to which you referred as being northwest of the junction of the West Wisconsin and the Green Bay & Minnesota was built.

A. You mean this one?

Q. Yes.

A. That *is* built this fall—this last fall; just recently built.

Q. You mean this present fall?

A. Yes, sir; just recently built.

Q. Is it used?

A. I couldn't say.

Q. You mean to say it was built during this present fall?

A. Yes, sir.

Q. You don't mean a year ago?

A. No; I mean this last fall.

Q. How long, in your opinion, was this tract of land, described as depot grounds on this Exhibit D, sufficient for the purposes of the Green Bay & Minnesota railroad—this piece of ground that is marked out on the map, beginning from 1872 and 1873, when the road was first built; how long did that continue to be sufficient?

543 Objected to.

A. I can only answer that question by saying that the business was done over it, and I never heard no complaints made?

Q. How long was the business of the road done on that ground?

A. It was done on that ground up till this last fall.

The MASTER:

Q. You mean the fall of 1880 or the fall of 1881, Mr. Hiles?

A. I mean this last fall—1880.

Q. This present fall—1881?

A. Yes, sir; I mean this present fall—the fall of 1881.

By Mr. ELLIS:

Q. You said before you have been frequently there during the time since the road was constructed up to now?

A. Yes, sir.

Q. Have you ever observed any difficulty in using that tract of land—anything inconsistent with its being sufficient for all the purposes of the road?

Objected to.

The MASTER: Answer the question.

Objection overruled, to which complainant excepted.

A. No; I never heard any complaints made.

544 By Mr. ELLIS:

Q. Well, from what you saw of all the business that was done on the road, was it sufficient—was it sufficient in 1873? We will begin there.

A. Yes, sir.

Q. How many years later than that did it continue to be sufficient?

A. It was used, as I said before, without any complaints that I heard made up till this last fall. All this new work has been put in here this last fall—last fall and summer.

Q. Nothing done towards it before the decision that was made in the case by Judge ——?

A. No, sir; all been done since that decision.

Q. That's all.

Recross-examination by Mr. CASE:

Q. You say you were not an official connected with the road; you were not connected with the road in any official capacity, I believe you said?

A. I did?

Q. If there was an insufficiency of room there at Merrillon would any complaints be made to you, or to whom would they be made?

A. I don't know who they would be made to.

Q. Don't you know enough about railroading to know that
545 the complaints would be made to the officials in charge of the road?

A. I suppose they would be made to the president of the road or superintendent.

Q. Then there could have been a great many complaints made and you not know anything about it?

A. There might have been since you were on the road, but I should have known if they had ever been made before.

Q. If there had been any made within the last 3 or 4 years you would not have known anything about it?

A. The last few years.

Q. You say there has been new work *been* put in there this fall?

A. Yes, sir.

Q. Since the decision in this case?

A. Yes, sir.

Q. Is that any evidence that it is not necessary for railroad purposes?

A. Yes, sir; I thought it was put in there for the purpose of getting the land.

Q. You were willing to swear from that fact the land is not necessary for railroad purposes?

A. I am willing to swear I thought it was put in to get the land.

Q. Are you willing to swear from that fact alone it is not necessary for railroad purposes?

546 A. I am willing to swear I don't deem it necessary. I don't think it is necessary.

Q. And you base your opinion upon the fact that it has been put in since that decision?

A. Yes, sir; I said with the exception of this branch that went into the Neillsville road.

Redirect examination by Mr. ELLIS:

Q. To what did your last answer refer?

A. From that that comes into the Neillsville road.

Q. You said a moment ago you didn't consider a certain Y necessary.

A. I mean this is not necessary, but this up here——

Q. That is southeast of the ground described on the map?

A. Yes, sir. It is not described on the map at all.

Recross-examination by Mr. CASE:

Q. Is that your signature? (Shows witness paper.)

A. Let me take it.

Q. I don't care about your taking it. Is that your signature? Just look at the signature.

A. Yes, sir.

Q. This purports to be a contract between yourself and the Green Bay & Lake Pepin railway, made upon May 30th, 1872, upon behalf of yourself and upon the behalf of the Green Bay & Lake

547 Pepin Railroad Co., signed by Henry Ketchum, president, witnessed by Morris. This is a contract for the construction of the railroad of the complainant between the west bank of the Wisconsin river and the west bank of the Yellow river. This, you say, is a contract made by you?

A. Yes, sir.

Q. Well, under this contract were you paid the amounts due you or any amount that was due you?

A. I was paid part of it.

Q. Then you were a contractor for the company, were you not?

A. Well, that is what that shows to be, but that don't do away with my understanding.

Q. How do you reconcile it with the fact that you were a contractor with Mr. Kelly?

A. Because Mr. Kelly was running the thing, and my understanding was he was the man.

Q. Then, as a business man, you are willing to swear after you executed this contract and signed it and did the work under this contract you were not a contractor with the Green Bay Company?

A. That contract shows it was with the Green Bay Company, but Kelly was the Green Bay Company.

Q. Why didn't Mr. Kelly sign the contract?

A. I don't know why he did not.

548 Q. You are as certain, then, about all the rest of your testimony as you were about this contract?

A. I am sure all the business was done with Mr. Kelly.

Q. You are just as certain all the rest of your testimony is correct as that part of the testimony which said you were a contractor under Mr. Kelly is correct?

A. If you understand my answer right, just as I answered.

Q. All right; that will do.

By Mr. ELLIS: Before the examination is commenced on the part of the complainants, I would like to say that Mr. Kelly is not able to get here this morning in consequence of a failure to reach the depot, and that that was occasioned by the breaking of the bridge at Wells' street, Chicago. I can read the dispatch if necessary. Mr. Kelly desires to be present at the examination, and would like to have the examination of the plaintiff's witnesses continued until to-morrow morning for the purpose of enabling him to be here.

By the MASTER: Any objection to that?

By Mr. CASE: Certainly; we should like to proceed with the testimony now.

549 (Telegram read.)

The MASTER: I think we — better go on with the testimony and if when we get through you want to go on with the cross-examination there will be facilities for doing it. If it is necessary that he should be present for the purpose of cross-examination we can make some arrangement for it.

By Mr. ELLIS: All I have to say is this, that this is a railroad matter, a matter with which I am not at all familiar with respect to the details which are necessary to be understood on the examination of questions of this kind. Mr. Kelly is personally familiar with them all and really the only person who is competent to conduct the examination.

The MASTER: We will go on with the testimony, and if there is any desire to cross-examine the witness further we may grant it.

By Mr. CASE: We would like to have your hono renter an order, if you make an order that cross-examination be allowed at some future time, that all the costs shall be paid.

The MASTER: I am not a taxing officer. That is a matter for the court.

550 The complainant then called as a witness H. G. H. REED, who, being duly sworn, testified as follows:

Direct examination by Mr. CASE:

Q. What is your present business?
A. Railroad officer.
Q. What railroad are you connected with?
A. Milwaukee, Lake Shore & Western.
Q. What position do you occupy?
A. General superintendent and chief engineer.
Q. How long have you been connected with that railroad?
A. Since 1871.
Q. Have you had previous experience on railroads?
A. Yes, sir.
Q. About how many years?
A. I commenced in April, 1847.
Q. Had a continuous experience since then?
A. Yes, sir.
Q. Among your duties was that of looking after the operation of the railroad?
A. Yes, sir.
Q. Is that now one of your duties?
A. Yes, sir.
Q. Have you had much business or much occasion to examine into the interchange of business at different points between railroads?
A. Yes, sir.

551 Q. What is your opinion, as a gentleman familiar with railroad business, as to the business which has to be transacted between railroads at junctional points; is it a matter of fact that all the business which is delivered by one railroad to the other road or delivered by the other road to this road is the business of one road, although it may prorate receipts?

Def't objected as leading and incompetent.

The MASTER: The question is rather leading in its form. Answer the question.

By Mr. CASE:

Q. If business is transferred by one railroad at a junctional point to another road and business by the other road is transferred to the first railroad, interchanged, is that business the business of one road as much as it is of the other?

Def't objected.

A. I should say it was.
Q. Although the *pro rata* rate may be maintained?
A. Yes, sir. That may be liable to adjustment between the companies.
Q. But it is the business of each particular company?
A. Yes, sir.

Q. Have you ever been to Merrillon, the junction point of
552 the Chicago, Milwaukee, St. Paul & Omaha road and the Green Bay, Winona & St. Paul?

A. Yes, sir.

Q. Have you ever looked over the ground there?

A. I was there and looked them over.

Q. Have you ever examined into the facilities for doing business?

A. What they have now I looked them over.

Coun. for plaintiff introduced in evidence map marked Exhibit 1 on the part of the complainant.

The MASTER: Any objection to that map?

Def't objected as incompetent, immaterial, and irrelevant. Objection overruled; to which def't excepted.

By Mr. CASE:

Q. This is supposed to be an accurate map of the junction point at Merrillon of the Chicago, Milwaukee, St. Paul & Omaha road and the Green Bay, Winona & St. Paul road?

A. Yes, sir.

Q. You say you have seen this ground?

A. Yes, sir.

Q. Now, if a railroad is interchanging coal—for instance, if the Green Bay road was getting coal to the Omaha road and making Merrillon a distributing point for coal—wouldn't there be necessity for having coal-sheds?

553 A. You mean for distribution to their own road or to other roads?

Q. To other roads.

Objected to. Objection overruled; to which def't excepted.

A. It would be necessary.

Q. From what you have observed of the present facilities at that point of the Green Bay, Winona & St. Paul road, are they sufficient?

A. They are not, as they are.

Q. I will show you upon this map now before you there have been certain lines laid down, a contemplated Y between the Green Bay road and the Omaha road, and also a location for transfer sheds and coal dumps, and site of a proposed depot, and also turn-tables, &c. In your opinion now, as a railroad man, are the railroad lines which are already there and the railroad lines which are contemplated to be made more than sufficient to transact the business between the roads, doing a large interchange of business of that character?

Defendant objected as incompetent.

A. No, sir.

Q. If there was a large exchange of wheat business at that point, would that require tracks to change the cars backward and forward from one road to the other?

554 A. Certainly.

Q. If a wheat business were being carried on between two railroads at this point and wheat was being shipped locally from Merrillon on the Green Bay, Winona & St. Paul road, would it be necessary to have an elevator there?

Defendant objected as incompetent, immaterial, and irrelevant and leading. Objection overruled; to which def't excepted.

A. It might and it might not be; I don't think it would be indispensable; I think it might be — without, provided they had proper arrangements with the other road.

Q. If there was wheat shipped locally from that point?

A. It would be necessary to have some building to handle it in; either an elevator or some other building.

Q. What other kind of a building?

A. Warehouse that would stand on the ground.

Q. In your opinion, I understood you to say the lines which are put upon this map to denote the lines which have already been built and the lines contemplated to be built are not any more than necessary to do a general transfer business between the two roads?

555 A. I would want to be somewhat more familiar than I am with the volume of business.

Q. To do a large interchange of business?

A. To do a large interchange of business it is not more than necessary.

Q. Take the witness.

By Mr. ELLIS: I don't believe I want to ask him any questions. I ask that Mr. Kelly be allowed to cross-examine him when he comes.

The MASTER:

Q. Did I understand you that the lines that are undertaken to be represented on this map, shown by 1, 2, and 3, are lines that are built?

A. They are not. This line is built that they had on this side; it is not shown there.

By Mr. CASE: This line here is not in dispute; that is not our line. This is the Neillsville line; all north of this.

The MASTER: In this case I understand there is no claim for lands north of this.

By Mr. CASE: Yes, sir; we claim this turn-table and that side track, and all this that is necessary to do business with the Neillsville line. We do an interchange of business with the Neillsville road as well as the Omaha road, and we want all this land and may need more in the future. We need additional tracks in the future

556 to do business between the 2 roads—3 roads, in fact.

WITNESS: I would like to state in relation to these connecting tracks they are not a real Y. It takes those two to make a Y. This is not a Y. This is not a Y, but that and that joined with the main track is a Y. In case of the Green Bay road doing business, delivering cars, they have either got to be thrown in with a fly

or properly set in. If they are coming down this way they should be set in there. If they have got cars going west they should be set in there, so they could take them without any extra switching. If they are going east they should be set in there; also empty cars, if they are coming home, they should be delivered there, so they could take them. If they are going west they should be taken this way.

Q. I understand you there should be a complete Y?

A. There should be a complete Y under any circumstances, and, if they are exchanging business both ways, going north and south and east and west, it should require two complete Y's.

Q. You never have seen this map before?

557 A. No, sir; only I have been over it; I understand this is 40 acres, this line around this square. There is a strip through there taking out a hundred feet; another one through there; another one through here; also, as I understood from Mr. Merrill, 3 streets run through it and a reservation of some 3 acres.

Q. What would be the distance from there to there?

A. A forty; it would be about 1,820 feet—one quarter of a mile.

Q. From the east end of the proposed switches to the crossing of the Omaha line?

A. From there to the crossing of the other road it would be about 1,200 feet.

Q. And then from there to the west end of the depot grounds 600 feet, as I understand it, making 1,800 feet in length?

A. The entire right of way; yes, sir.

Q. For the purpose of exchanging coal, which the counsel spoke of, how many sheds and how long sheds would you think, in your judgment, would be necessary—more than one?

Q. It would depend entirely on the quantity the other road would want to distribute. It would have to be located in the fall, before the close of navigation. They would have to have very large sheds; probably a hundred thousand tons.

558 Q. The sheds you speak of are for the purpose of unloading coal cars and then subsequently loading others?

A. The other road load from them to distribute wherever they may want to use it.

Q. I notice that on this map there are 3 of those coal-sheds marked. In view of the situation of the ground and of the tracks, in your judgment is that an economical distribution or arrangement to have 3, or would you have one longer one or 2 longer ones.

A. It depends upon delivery. If you are approaching the other road on a straight line, perhaps one long one would be preferable, but in this case they would approach on their own grounds, and, coming in always with a train load, say, 20 or 25 cars—there are 3 tracks and only two buildings there—they would be unloading from the cars as fast as they could conveniently handle it in, and this arrangement might not be objectionable.

Q. You think, then, in view of the circustances, would you, that ? would be preferable to one on that spot?

A. If they are going to put them in that position.

559 By Mr. CASE:

Q. There are only 2 sheds and 3 tracks; one in the center of the 2, and one on each side. What you call coal-sheds are tracks?

A. Yes, sir; you make no arrangement for an engine-house. My idea would be that they would need an engine-house.

Q. We want a car-shop for repairing cars, and we want an engine-house here. You think if they had a large business here it would seem to be necessary to have car-shops and an engine-house?

A. It would be indispensable to have a local engine located there.

Q. That, in your opinion, could be only at this point if this other land is occupied?

A. If you occupy the position contemplated.

The MASTER:

Q. Do I understand you from that, in your judgment, examining this ground, that you would locate your engine-house, if you had one, on the other side of this Neilllsvile track or this side? I notice they have a turn-table marked there.

A. It seems to me in an improper place; improper with the track, because it is not convenient to get at there. It should go somewhere where there is more room than there is there.

560 Q. In that view of the tracks and ground and the interchange of business, &c., would you locate your engine-house this side of the Neillsville track or the other?

A. I would prefer it on the south.

By Mr. CASE:

Q. If the engine-house was located on the south side would you erect repairing-shops to repair cars on the north side?

A. I should want to locate it where they could be accessible to the turn-table. I should prefer not to put them opposite on the other railroad track.

Q. Still, with the spur track running here, it would be just as accessible to the turn-table where it now is as the engine could be from the engine-house on this side, with a spur track running in?

A. I should hardly think it would, but that is a matter of judgment of each road for their own officials to decide for themselves.

The MASTER:

Q. You would prefer to have it on the south side of the Neillsville track rather than on the north side, if everything else was equal?

A. Yes, sir.

The MASTER: Did you want Mr. Kelly to cross-examine this witness?

By Mr. ELLIS: Yes, sir.

561 The complainant then called as a witness CHARLES F. HATCH, who, being duly sworn, testified as follows:

Direct examination by Mr. CASE:

Q. What is your present occupation?
A. General superintendent of the Chicago, St. Paul, Minneapolis and Omaha railroad.
Q. Have you been long with that road?
A. Since last March.
Q. Have you had any previous railroad experience?
A. Yes, sir.
Q. Upon what roads?
A. Upon several roads; on the Minneapolis & St. Louis, the Eastern Railroad of Massachusetts, Lake Shore & Michigan Southern.
Q. About how many years have you been engaged in the railroad business?
A. More than 20 years.
Q. During that time have you had occasion to operate railroads—have charge of the operation of the trains?
A. Yes, sir.
Q. Is that among your duties at the present time?
A. Yes, sir.
Q. Is this road you refer to the road that crosses the Green Bay & Minnesota road at Merrillon Junction?
562 A. It is.
Q. Have you been upon the grounds at Merillon Junction?
A. Yes, sir.
Q. Is there any business done between your road and the Green Bay & Minnesota road?
A. Yes, sir; quite considerable.
Q. About what is the character of that business at the present time?
A. Well, it is the interchange of lumber and coal and some other business.
Q. Any wheat?
A. Not a great deal of wheat; no.
Q. This coal business you speak of, how long has that interchange been going on of the coal business?
A. The coal business has been this fall.
Q. Has it assumed any magnitude at all as yet?
A. Well, it has been quite large at times.
Q. It has been quite large at times?
A. Yes, sir.
Q. Have you been over the ground that this map is supposed to locate?
A. Yes, sir; I have been over the ground.
Q. Now, in your opinion, do you know the present facilities that the Green Bay road has for doing business—interchanged business—with your road at the present time?
563 A. Yes, sir.

Q. In your opinion, as a railroad man, are the facilities which they now have adequate to do a large interchange of business?

The MASTER: Please define what you now have.

By Mr. CASE:

Q. Please state from the map what facilities the Green Bay road has at the present time for doing an interchange of business with your road and for doing other business.

Objected to as incompetent and leading.
Objection overruled; to which def't- excepted.

A. There is a connecting track between the Omaha railway and the Green Bay road; this is southwest, in the southwest angle. There is a connecting track in the southwest angle. There is also a connecting track between the Neillsville track and the Green Bay track on the northeast, and there has lately been built a connecting track in this angle here, which would be somewheres about on a line with this lead pencil. There is a connecting track in that angle.

Q. That is all?

A. That is all the connecting tracks.

By the MASTER:

Q. Now, about side tracks for local business?

564 A. This is a side track in here; just how long that side track is I don't remember; it is not a long side track.

The MASTER:

Q. This track shown here has been used for business and the track has been put in here, which is used for business?

A. Just about ready for operation.

Q. It has not been used yet?

A. No, sir.

Q. Then a side track which is not shown here?

By Mr. CASE: I don't understand that that is on the ground in dispute?

A. I don't know. This is simply giving the facilities they have.

The MASTER: It is only a question with me as to the sufficiency of the grounds. This does not show the connection of this side track with the Green Bay & Minnesota.

A. Well, that track is connected there.

Q. Comes down here?

A. Yes, sir.

Q. There is a transfer switch does not show in there?

A. Yes, sir.

Q. The Neillsville Branch connects with the Omaha Line here?

A. Yes, sir.

565 Q. So that by using the Neilsville Branch and this side track there is a connecting track?

A. Yes, sir.

Q. There is a connecting track there and there and there?

A. There is a connecting track there and there and there. Then there is this side track in here.

By Mr. CASE:

Q. You know the location of the proposed Y, do you not, upon this side between the Omaha and Green Bay road?

A. Yes, sir; I know about where that is.

Q. Do you think that would be necessary for the proper interchange of business that that should be built by the Green Bay road?

Objected to as incompetent.

A. I think it is quite necessary that that connecting track should be put in.

Q. If the Green Bay road are doing a coal business and the coal business was increasing would it be necessary for them to have coal-sheds in which they might put their coal so that it could be sent out in different directions through the country. Suppose it was necessary for that coal to be transferred before immediate shipment, would it be necessary to have coal-sheds?

Objected to.

A. Yes, sir.

566 Q. That is frequently done by railroads; warehouses are used by railroads to store coal; is it not?

Objected to as leading.

A. Yes, sir.

Q. Do you think the lines, the railroad tracks which are now connecting the Green Bay road with the Omaha road and the lines which are contemplated to be erected connecting 2 roads, and also erected for the purpose of having transfer sheds for coal, are or are not necessary?

Objected to as incompetent and leading.

A. I think they are.

Q. Is it or is it not necessary for the Green Bay road, if a large interchange of business is done, to have a round-house here, engine-house, where I put my pencil?

A. I think it is quite necessary to have a round-house there of some sort.

Q. Would it be or not necessary to have a building for the repairs of cars?

A. Yes, sir; it would be necessary.

By Mr. ELLIS:

Q. I didn't understand you to locate the points at which it would be necessary to locate those buildings?

A. The question was simply on the necessity of an engine-house, but I don't understand the exact point.

567 By Mr. CASE:

Q. Would you, from your experience, locate the engine-house where I place my pencil?

A. I should think, from my knowledge of the location, that an engine-house about this point would be fully as convenient as at any point on the property shown there that could be selected.

Q. On which side of the road is that?

A. That is on the east side of the Omaha Line; it is in the north-east angle.

Q. On the north side of the Green Bay road?

A. Yes, sir.

Q. Would you erect repair-shops upon the north side of the Neillsville Branch or between the Neillsville and Green Bay road? Which would be the most convenient?

A. I should say for the Green Bay Line that probably they would find it more convenient to erect their repair-shop on the same side with the round-house.

Q. But if it was necessary to have this land here for yards to store things in then it would be just as convenient, wouldn't it, to have the repair-shops upon the north side of the Neillsville Line?

Objected to as incompetent.

Q. If this land has got to be used for storage purposes—stock-yards?

568 A. It probably would be about as convenient on the other side.

Q. That will do.

By Mr. ELLIS: I will leave the cross-examination to Mr. Kelly, as desired.

The MASTER:

Q. From your inspection of the grounds and your knowledge of the location at that point would you locate the coal-sheds as they are located there? Is that a good and judicious location, in your judgment?

A. Yes, sir.

Q. Or would you locate them somewhere else?

A. I should think that was probably about as good a location as they could get.

Q. What is your judgment as to the necessity for the business of the road to have 2 sheds or one or more?

A. That would depend very largely upon the amount of business to be done there. This coal business is somewhat in its infancy, and if that business gets to be at all to the proportions that we have been thinking it will, it will only be a short time when, if the business is to be done in that way, two sheds would be, if anything, too small for the business rather than too large.

569 Q. In doing the coal business that you exchange between the 2 roads do you load and unload there?

A. We don't now; we exchange cars.

Q. Then the necessity for the construction of the coal-sheds is to enable you to do business without the exchange of cars, not using each other's cars?

A. To do that and also to have a supply of coal located as near where it is to go finally as it can be. I suppose the idea of putting the sheds there would be to enable the Green Bay, when they could, to take the coal from this point at their convenience and put it down there and have it there stored ready for the demand that might come. The coal business—coal usually has been stored up during the summer months, brought by lake up in this section of country, and stored at some point, and usually the road first receiving the coal can take this coal along in the summer and put it at the storage point better than they can later or when it gets to be late in the fall or early winter, when there is a great demand for coal.

Q. These sheds, as I understand it, are for coal for transportation rather than coal for the use of the companies?

A. Yes, sir.

570 Q. It is not a supply of fuel for the railroad?

A. Not so much; of course it might be a supply of fuel so far as the Omaha Line was concerned, but so far as the Green Bay road was concerned it would be a supply for fuel for transportation—transportation over their road.

Q. How long do you understand those sheds to be as designed on the map?

A. Well, I should judge them to be some 300 or 400 feet long; I don't know the scale of the map, but, judging from the location of the land, I should think those were 300 or 400 feet long. It would be just about 400 feet; I did not know the scale of the map; I judged that simply from my knowledge of the ground there.

Q. With your attention being called to the size, would you still think those 2 sheds are necessary for the business?

A. Yes, sir.

Q. Would the Neillsville track, as shown upon the map there, be any objection to putting the shops or engine-houses north of it?

A. On this side?

Q. On that side.

A. Well, that would, of course, depend somewhat upon the

571 arrangement with the Neillsville Company for getting across the track there. The company owning this line, so far as putting the engine-house over here is concerned, it might be objectionable. They would have to cross everything here on the track. So far as a shop for some light repairs, or simply holding tools or that kind of thing, it might be put over here. The arrangement, of course, might be made with this company to have a track crossing over here——

Q. From all I understand, if everything was equal, you would have it south of the track rather than north?

A. Yes, sir.

Q. Mr. Hatch, in your experience as a railroad manager, what length of depot grounds do you require or do you have, as a rule, at stations—every station—on your line?

A. We calculate to take about—our average ordinary local station—we take about 1,500 feet in length and 300 feet in width additional to our right of way, making a strip of land through the depot ground of about 1,500 feet long and 400 feet wide.

Q. That is the usual rule?

A. Yes, sir; about the usual rule for ordinary local stations.

572 Q. And, in reference to the arrangement of side tracks at local stations, about how many and how do you adjust that? I am not talking of exceptional stations, like a crossing, as this is, but the average run of stations on your road.

A. Well, ordinarily we put in upon the one side of the track—put in a station building, freight and passenger house together, and put in a side track, the station building being next to the main track and the side track going back of it—outside of it. That is our usual way of putting them in.

Q. You have one side track back of your station-house, and the main track in front of it?

A. Yes, sir—that is, for a small, ordinary station. Of course, if we find business increasing—the business of the road increasing—and want more passing places, we put in additional side tracks; but that is the ordinary local station.

Q. At an ordinary local station about what is the length of your side tracks?

A. Usually about 1,500 or 1,600 feet.

By Mr. CASE:

Q. Mr. Hatch, in locating a side track at an ordinary station, if the side track was of such a length that to pass a freight train

573 with a passenger train it became requisite to put the passenger train on the side track, would you consider that side track long enough?

A. No, sir; I would not.

Q. Then, in your judgment as a railroad man, there should be room enough on the side track to put the freight train and allow the passenger train to pass?

A. Yes, sir.

Q. With any cars that might be on the side track, that are loading there for local business, there should be ample room?

A. There should be ample room to put the freight train on the side track over and above the ordinary local business of the station.

Q. Is it or is it not the custom among railroad managers to have at stations which are doing an average amount of business a loading and unloading track in addition to the side track upon which freight trains may use to pass or trains upon the main line.

A. That depends, of course, upon the amount of business done at the particular station and upon the amount of business done over the road. Some stations, where they have but a few cars to load at a time, the side track usually should be long enough to accommodate an ordinary freight train and the few cars that are ordi-

574 narily loaded at that station. Now, if the business increases at that station so that they require more cars for their busi-

ness at that station so that there is not room to put a freight train on the side track and accommodate that business, then, I think, they ought to put in an additional side track.

Q. That will do.

The MASTER: Any questions, Judge Ellis?

BY Mr. ELLIS: Yes; just one or two.

Cross-examination by Mr. ELLIS:

Q. Are the sheds noted upon this map necessary for the present business of the road, in your opinion—necessary to the present business of the road?

A. As the business is being done at present and the business of to-day, I don't know as it is absolutely necessary for to-day's business.

Q. Has it been necessary in the past, so far as your knowledge extends?

A. I don't think they have, so far as I know of. As I said before, I think the coal business is in its infancy.

Q. Then your testimony relates mainly to what may become necessary in the future?

A. Yes, sir; so far as the coal-sheds are concerned.

Q. So far as the coal-sheds are concerned?

A. Yes, sir.

575 Q. Are you familiar with the volume of business that has been done upon this road during the last 5 years?

A. I know nothing about it, except since last March.

Q. I believe that is all until Mr. Kelly comes.

The complainant then called as a witness TIMOTHY CASE, who, being duly sworn, testified as follows:

Direct examination by Mr. CASE:

Q. What is your present business?

A. Superintendent of the road.

Q. Of what road?

A. The new organization is Green Bay, Winona & St. Paul.

Q. What position do you hold toward the Green Bay and Minnesota road?

A. Receiver and general manager.

Q. How long have you been connected with the Green Bay & Minnesota road?

A. Since December, 1877.

Q. Had you had any previous railroad experience; and, if so, for how many years?

A. My first railroading was in 1849.

Q. During your railroad experience have you had occasion to have charge of the operation of railroads?

A. Yes, sir.

576 Q. Is that among your duties at the present time?

A. Yes, sir.

Q. Will you state what has been your experience, more particularly to the facilities which have been afforded you at the different stations, upon the Green Bay & Minnesota railroad as to room for doing business? We will take up the station at Seymour first.

A. I would say in relation to Seymour——

Mr. CASE: This is a map of Seymour, which is a tracing of the map of Seymour which has already been introduced in evidence by the defendants. I would like to have it introduced in evidence and marked Ex. 2.

Def't- objected as incompetent.

The MASTER: If the objection is insisted upon it will be necessary to show that it is an accurate copy.

By Mr. CASE: I will show that.

The MASTER: Let me understand. Is this, as you show it, a tracing of the map?

By Mr. CASE: No, sir; there has been some changes on it. The tracing of the depot is the same.

The MASTER: This is the map the defendants offered. Now put the other by the side of it.

By Mr. CASE:

577 Q. Will you explain, then, from the map which is now before you about your present facilities for business at Seymour, whether or no they are sufficient? If they are not sufficient, what is the objection to them, &c.?

Def't- objected as incompetent and immaterial. Objection overruled, to which def't- excepted.

A. The room has been so limited there that in passing trains we often have to side our passenger train and let the freight train pass on the main track, and — causes a detention of from 5 to7 minutes and sometimes 10 minutes by not having sufficient room or length there, sufficient side track for transferring and loading, where we have had stock and lumber and shingles, ties, and wood that are loaded at that point, and we found the room very inadequate at present—that we are occupying at the present time.

Q. What addition should there be?

A. It needs a longer side track on the south side extending—if we had one 1,500 feet extending out 200 or 300 feet further east than the present one does it would accommodate the business and leave our passenger cars free there.

Q. Do you need room for any other purposes there?

A. We need room for piling wood ties and lumber.

Q. Does this map, which I now show you, denote the amount
578 of land which you need? (Shows witness Ex. 2.)

A. It does.

Q. If so, state what it is. Specify what you want in addition to what you have.

A. Probably we want more at that point than is now in dispute, especially in length, but on account of not having sufficient bought

in length—of course, room can be used for piling our wood and ties and lumber yards there, and we need room for an elevator or warehouse. There is going to be a grain country there—a very good point for grain shipment.

Q. Is there any coal business anticipated to be done at Seymour? Do you need any facilities for doing coal business?

A. Yes, sir; there will be quite a large local trade there. We need some coal shutes.

Q. Is or is not this coal business a new business in which your road has lately engaged?

A. It is rather a new business.

Q. How much additional land do you require in measurement from that which you now have? Can you state about what is the length of land you need and about the width you require at Seymour?

579 A. Does that give us the length in dispute? As I said before, I think we need to run out here.

Q. How much longer do you want the side track to be than it now is?

A. I think it is 600 or 700 feet mentioned there.

The MASTER:

Q. The length was given on the previous examination. Isn't it stated on the map?

A. I think not. I think we need 1,400 or 1,500 feet, to say the least, there, at that station, in length. As I said, there may not be that amount down in length; that is now in dispute. Of course, when we come to lumber yard and tie and wood ground, why we need more in width on account of our being limited there in the length.

By Mr. CASE:

Q. How much wider do you need the land than you have now?

A. I don't know what that width is there. The great want is for lumber yard and tie and wood ground there, to make use of for the business there. It has become practically inconvenient to purchase wood and ties along between stations, and we are buying altogether at stations, and we cannot get the ground to pile wood and ties up instead of buying it between stations, as it is impracticable

580 now, on account of the business of the road, in our loading of it between stations, and we have not the protection between stations. Incendiaries have burned up wood for us between stations. It disappeared in some way suddenly, and we cannot take care of it unless we have it near our stations. We need the room for that purpose.

Q. You need that room at the present time, do you, that you have been testifying to—that additional room for the business of the road?

A. Yes, sir.

Q. Mr. Kelly testified this 5-acre lot was a thousand feet in length, and, about, in width 225 feet. You say that you need 1,500 feet in length?

A. 1,500 feet in length, and about 400 feet in width at Seymour.

The MASTER:

Q. Now, right there in that connection, having stated now what you need, state what you have in length and width, and tell it all particularly.

A. I think we have 600 —.

By Mr. CASE:

Q. Mr. Kelly testified the length of the side track was about 600 feet.

581 A. Between 600 and 700 feet the present side track is.

Q. And you need one 1,500 you say?

A. Yes, sir.

Q. He also testified the width is 325 feet, including the right of way across that plat. About how much do you think you need, including your lumber yards and coal-yards—you spoke of a warehouse—about how much do you require?

The MASTER: *Q.* Let him answer my question.

A. I don't think there is at the present time more than 200 feet in width that is occupied there.

Q. I want to know how much you have at the present time.

A. 150 to 200 feet, I think, that is occupied now, but somewheres in the neighborhood of 600 feet in length by about 150 to 200 feet in width.

By Mr. CASE: I would also like to introduce the recorded map of the village of Seymour in evidence and have that marked Exhibit 3.

Def't- objected as incompetent and immaterial.

The MASTER: You propose to show by somebody that it is a correct map?

By Mr. CASE: I will have to show it from the face of the

582 map itself. It has been duly recorded. I don't understand that there will be any particular question as to this map. The simple question is *to* the boundaries and localities are shown to be correct.

The MASTER: I will admit the map.

Objection overruled, to which def't- excepted.

By Mr. CASE:

Q. Will you state about your present facilities at Black Creek?

The MASTER: Wouldn't it be as well to dispose of this first? Would not it be as well to cross-examine as to this?

By Mr. CASE: I think it would be the best way to cross-examine upon these points. That is the custom we have pursued before.

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The MASTER: Wouldn't it be as well to dispose of this first? Would not it be as well to cross-examine as to this?

By Mr. CASE: I think it would be the best way to cross-examine upon these points. That is the custom we have pursued before.

By Mr. ELLIS: Mr. Case is here in town, and perhaps it would be unnecessary for me to cross-examine him now if Mr. Kelly is going to cross-examine him.

By Mr. CASE: I shall certainly have to file my former objection to any cross-examination being conducted hereafter without an express order of the court. We are here by consent of the parties and upon stipulation, and it is their duty, if they are going on to take this testimony, to cross-examine at the present time. Do I
583 understand your honor to rule that this entire cross-examination shall be put off for some future date?

The MASTER: The application has not been made.

By Mr. CASE: We would like them to take some action here, because I shall refuse to go on any further until they are ready to cross-examine.

By Mr. ELLIS: I intended to be understood as asking that Mr. Kelly be permitted to cross-examine the witnesses.

By Mr. CASE: The def'ts are represented by counsel.

The MASTER: I suggested that the cross-examination as to this village of Seymour might be made now in the same way that we did when we examined Mr. Kelly, taking up each town by itself. Now, as I understand, you don't wish to do that.

By Mr. ELLIS: Only for the reason stated, that Mr. Kelly is not here present.

The MASTER: You can go on with the balance of your testimony, if you choose, as to the balance of the places.

By Mr. CASE: I shall refuse to do that.

The MASTER: I cannot help myself.

By Mr. CASE: That is, if your honor rules against me, I shall insist upon the cross-examination taking place now. I now
584 move that the cross-examination shall take place.

The MASTER: Do you object?

By Mr. ELLIS: I have already asked that Mr. Kelly be permitted to do that on his return, which will be as early as to-morrow morning, and if that time does not suit the master or the counsel some other time be set which will suit.

By Mr. CASE: I would like to oblige them, if I could, but I am compelled to go away to-night and shall be obliged to be away 10 or 15 days; we are here in good faith; the counsel on both sides are here; there is no reason for delay.

The MASTER: It would seem that Mr. Kelly made an effort to be here and failed, and to say that he cannot be permitted to cross-examine these witnesses would seem to be an arbitrary exercise—to say the least, a very doubtful exercise—of power on my part.

By Mr. CASE: He has his own counsel.

The MASTER: It was stated that he was of counsel himself. It would seem a very arbitrary exercise of power on the part of the commissioner to refuse Mr. Kelly an opportunity to cross-examine
585 any of these witnesses. As to the time of the cross-examination, of course, I will make myself subject to the pleasure of the parties.

Complainant excepted.

Further taking of testimony adjourned until November 29th, 1881, at 9 o'clock a. m., at Cook's Hotel, in Green Bay.

JAMES H. HOWE,
Special Master.

586 *Testimony of Sundry Witnesses Taken Before Honorable James H. Howe, Special Master in Chancery.*

In the Circuit Court of the United States for the Eastern District of Wisconsin. In Chancery.

TIMOTHY CASE, Receiver of The Green Bay & Minnesota Railroad Company, Complainant,

vs.

DAVID M. KELLY, HENRY KETCHUM, GEORGE HILES, and THE ARCADIA MINERAL SPRINGS COMPANY, Defendants.

NOVEMBER 29TH, 1881—9 a. m.

Parties met, pursuant to adjournment, at Cook's Hotel, at Green Bay, Wisconsin.

Present: Honorable James H. Howe, master; Theodore G. Case, Esq., counsel for complainant; David M. Kelly, Esq., counsel *pro se;* E. H. Ellis, Esq., counsel for defendants Kelly and Ketchum; S. P. Powers, Esq., counsel for defendants Kiles and The Arcadia Mineral Springs Company.

Mr. CASE: I would like to have a ruling by your honor as to the nature of any testimony that may be admitted by you upon
587 behalf of the defendants from this time forward.

The MASTER: Upon what point?

Mr. CASE: Upon the character of the testimony; whether it is to be strictly in rebuttal or whether your honor is going to allow any more.

The MASTER: Do you wish to offer any testimony, gentlemen?

Mr. ELLIS: I suppose we may, but I understand that Mr. Case's examination is not concluded—the examination of the receiver.

Mr. CASE: I am not ready to call him again at present; I wish to have a ruling of the court.

The MASTER: I shall receive any testimony that is offered, Mr. Case, this morning from any parties.

Mr. ELLIS: If the witness whose examination was commenced before the adjournment is not to be pursued further, I would like to have the minutes of the testimony to which Mr. Kelly refers before we proceed any further.

The MASTER: The minutes of the testimony is here. Have you any testimony to offer this morning, Mr. Ellis?

Mr. ELLIS: Not now.

Judge POWERS: We have no testimony to offer until the complainant has closed.

Mr. CASE: May it please your honor, I think I have a right
588 that the court rule on the character of testimony to be admitted hereafter. The parties have already introduced their

testimony, and I claim as a matter of right that they must introduce testimony which is strictly in rebuttal.

The MASTER: I shall receive any testimony that is offered under the terms of this order until this testimony is closed.

Judge POWERS: I have not been here always. I ask for information if there has been any testimony offered relative to the amount of land required at Blair and Arcadia?

E. C. CASE, produced as a witness on behalf of complainant, being first duly sworn, testified as follows:

Direct examination by Mr. CASE:

Q. Mr. Case, what is your present profession, or have you a profession?

A. I have.

Q. What is it?

A. A civil engineer.

Q. How long have you been civil engineer?

A. I have been at that profession for about 12 years.

Q. What departments have you been engaged in?

A. Location of railroads, construction of the same, laying out of town lots, laying outside tracks of railroads, depot grounds, and incidental switches required for the use of railroads, as well as operating railroads.

589 Q. On what roads have you been engaged as civil engineer?

A. Sussex railroad of New Jersey, International and Great Northern railroad of Texas, and Delaware and Lackawanna and Western railroad.

Q. Are you engaged upon any railroad now in the capacity of civil engineer?

A. Yes, sir; upon the Green Bay, Winona & St. Paul railroad.

Q. Are you engaged at present in superintending the construction of any railroad besides the Green Bay, Winona, & St. Paul?

A. Yes, sir; the Green Bay, Stevens Point & Northern railroad.

Q. Have you ever been engaged in the operation of railroads?

A. Yes, sir; I have been engaged in the capacity of general superintendent.

Q. Of what road?

A. The Sussex railroad of New Jersey.

Q. For how long time?

A. For a period of about four years.

Q. What other duties have you at the present time besides that of chief engineer of the Green Bay, Winona & St. Paul railroad?

A. That of general freight agent.

Q. Does that business require you to observe the amount of room that is necessary at stations for the transaction of freight business?

590 A. It does; it requires an observation at every station along the line of railroad relative to the side-track room we have—relative to the room we have for the erection of elevators,

warehouses, and stock-yards, lumber yards, and coal-yards that may be located for the purpose of carrying on the business properly.

Q. Have you ever noticed the room that was requisite at the station of Seymour—that is, requisite now or that may be desired in the future at Seymour, Merrillon, Black Creek, Manawa, Blair, Whitehall, and Arcadia?

A. I have.

Q. In your opinion, what amount of property does the Green Bay, Winona & St. Paul railroad need at these stations to do the business which is now being done or which may be done in the near future, with the exception of the station of Merillon—about what amount of property in general terms?

A. All railroads that I have been located on we have established a rule, required for the immediate business and for the near future. that is to follow, that we deemed from 1,800 to 2,000 feet in length by about 400 feet in width necessary for every station that was located along the line of the road——

Q. What is generally necessary?

591 A. And *of* that amount, in my mind, would be absolutely necessary in connection with the Green Bay, Winona & St. Paul road at the present time, for two reasons: First, that this road has been running for a number of years and its business has accumulated different from what a new road would be; second, if a new road required that amount of land a road that has been running for a period of seven or eight years would require that amount, if not more; but, in my estimation, I think that a distance in length of 1,800 feet by about 400 feet in width would be required at all the stations referred to, with the exception of Merrillon.

Q. If the railroad company should require, in its ordinary business, at its ordinary stations the amount of land which you state to be necessary would it require any additional land, provided it should embark in a new business in connection with its other business? If it should embark in the coal business would it require any more room for coal-yards or warehouses for coal—for storing in coal?

Objected to by counsel for defendants and objection overruled by the master; to which ruling of the master defendants' counsel then and there duly excepted.

592 A. That would depend a great deal upon the nature of the business done at every town. Of course, if coal traffic is done to the extent that it is done in our Eastern towns, why, coal-yards and transfer sheds and stock-yards, I should say, would fully cover that much ground, and perhaps, in a measure, more. From the ordinary observation that I have given, it would cover ground 1,800 feet in length by 400 feet in width. If they entered in the coal business as some of our roads in the East do they would naturally handle coal in that way and have coal-yards for people to obtain coal from instead of delivering it at the railroad track.

The MASTER: I understand you to say the coal business at any of the stations would result in additional ground being needed to transfer it?

A. Yes, sir.

Mr. CASE: Is there any coal business at the present time being done on the Green Bay, Winona & St. Paul road to any light or great extent?

A. The coal business of the road has started since my connection with the same, and we are at the present time distributing, receiving coal rather, at Green Bay, and distributing it from here to Merrillon, and thence to St. Paul. It has but recently started and no transfer.

593 Q. Is it contemplated to erect coal-yards along the line of the Green Bay, Winona & St. Paul road?

A. My instructions from the president and officers of the Green Bay, Winona & St. Paul road are to the effect that we expect to do an immense coal business over this road, and that any further improvements that are made on the line of the road are made with a view of giving us ample room, and with the facilities of putting in coal-yards along the line for the distribution of our coal.

Q. Have you ever noticed the station facilities at Arcadia?

A. I have.

Q. State if you can, accurately as you can, the extent of the present facilities and what is desired there in addition to the present facilities?

A. As it is now, at the station of Arcadia, we have but one side track, and a very short one at that, and very close to the main line, giving very little room for the receiving of live stock in and no room for the receiving of our lumber and for the erection of a lumber yard, and no room whatever for putting up of coal-yards there now.

594 Q. Are the present facilities for grain ample at the present time, at that point? Is there any more room needed for additional warehouses or elevators to handle them.

A. If the large amount of shipments require us to put up an elevator—which is more than probable it may *be made*—there is not room enough there for grain purposes.

Q. About how close to the depot is the side track you speak of—directly abbuting it, is it?

A. It is running parallel with it and a distance of about 25 or 30 feet from the main line.

Q. Are there any buildings which are directly contiguous to the side track, the room upon which they stand are needed for railroad purposes?

A. There are buildings now standing there occupying in a great measure—in fact, are encroaching upon—what I should call depot grounds. If I should attempt to lay out the grounds requisite for the station it would extend to the ground occupied by these buildings.

Q. About how close to the depot, and upon which side are these buildings? For instance, is there an hotel there that is standing upon depot ground?

A. There is an hotel now standing upon depot ground on the south side, I should judge from the points of the compass, of the line

running east and west, on the south side of the line, which is encroaching a little on the depot ground.

595 Q. About how close to the depot is that hotel, in your opinion?

A. Well, taking the east side of the depot as the measurement, I think it is about 25 feet to the outside limit of the hotel.

The MASTER: You mean 25 feet from the building itself?

A. Yes, sir; from the depot building itself—from the south corner of the depot to the north corner of the hotel.

Mr. CASE: Now your *guage* is a standard *guage*. If at an ordinary station the company desires from 1,800 feet in length by 400 feet in width, about how much of the land in width which is required there at Arcadia would embrace the ground covered by the hotel?

A. I have never taken measurements, but I could judge it would take pretty nearly the whole of the building.

Q. More than all the building. For instance, taking a piece of land 200 feet wide on each side of the depot building, would it or would it not more than embrace the hotel there?

A. Yes, sir; it would more than embrace the hotel.

Q. And that you think is requisite for railroad purposes?

A. Yes, sir; I do.

596 The MASTER: Taking 200 feet from the depot building or from the center of the main track?

A. From the centre of the main track.

Mr. CASE: Why is it, in your opinion, that we could not take 200 feet on the north side of the track at Arcadia?

A. I understand that there are parties owning the property there that purchased; there are parties there that have purchased it.

Q. The title is not in the name of the defendants?

A. No, sir; not in the name of the defendants.

Q. Well, then, suppose that we take 100 feet on the north side of the depot at Arcadia, then how much would be required on the south side of the depot?

A. It would require us to have 300 feet.

Q. And that would then embrace the hotel and one or two additional buildings?

A. I think it would; yes, sir.

Q. How about the present side-track facilities there at Arcadia?

A. The side tracks are short and inadequate to the business.

Q. Is there any more needed?

A. Yes, sir; in fact we should require another side track there of a great deal more length than the one there at present for the passing of trains alone, using the present side track for unloading and disposing of freight.

597 Q. Upon which side of the depot should the side track be located for the convenience and necessary use of the railroad business—upon the side the hotel is upon?

A. Well, yes, sir.

Q. Now, we will take up the station of Manawa. Have you ever had occasion to examine the grounds at Manawa?

A. Yes, sir.

Q. (Handing witness Exhibit 1.) Was that tracing made under your directions?

A. Yes, sir.

Q. From what was it made?

A. From copies found in the engineer's office of the Green Bay & Minnesota railroad.

Q. Was it made from this map which has been introduced here (handing witness map marked Exhibit D)?

A. Yes, sir.

Q. That map was made under your direction, was it?

A. It was.

Q. (Handing witness map marked Exhibit 2 upon the part of the complainant.) Was that tracing made under your directions?

A. It was.

Q. Why was it made; was it made from this map (handing witness maps marked Exhibit No. 3 upon the part of the complainant)?

A. Yes, sir.

Q. Describe *it* accurately as you can the present facilities which the railroad has for doing business at Manawa, and also what is necessary in the future.

598 A. Well, I think that would be impossible for me without a map of the grounds; nothing more than that since the depot ground has been located there. There has been an additional side track constructed there running down to the stream where saw-mills have been located, about a mile or a mile and a half from the station. I think it runs through some part of the depot ground, and also runs through some tract of land belonging to some of these defendants, and to show that more clearly and the amount of room required it is necessary for me to have a map in order to explain to the court.

The MASTER: Do I understand you, Mr. Case, that a track a mile long has been built from the main track at the station?

A. Yes, sir; extending down to saw-mills which the company is doing business with; running with the property belonging to these defendants, as I understand it. It is right near the station, running off the depot grounds down to these mills.

Mr. CASE: Take the village of Whitehall. Have you had an opportunity of examining the room and facilities there?

A. Yes, sir.

Q. What are they?

A. The side track is too short there.

The MASTER: Here is the map of Whitehall.

599 Mr. CASE: Now, this map which I show you is a map which has been introduced as evidence by the defendants, and upon it a tracing which denotes the amount of land which was necessary for railroad purposes at the time this map was made, which, I believe, was some time in 1873 or 1874. Is that amount at the present time sufficient for railroad purposes?

A. It is not. I observe that there is no room here for lumber yard, no room for a coal yard, and no room at all for an elevator—grain elevator. They have to have this room here for the dispatching of the business, as it increases from time to time, on the road, and I consider that an additional side track on this side (indicating) would also be necessary.

Q. Would there be any room needed for coal yards?

A. I stated the room was required for coal yards and for lumber yards as well.

Q. You stated at a time here you wanted land 2,000 feet in length by 400 feet in width. Is Whitehall an ordinary station or is there more than an ordinary amount of business done at Whitehall?

A. Whitehall is a station of quite some business and it is increasing every day, and the prospects are that the shipments of
600 freight and grain from that station are about as large, in fact are larger now than from Merrillon alone, I should think.

Q. Applying the rule which you have stated, would it require any more land than is needed at an ordinary station?

A. I should think the land by distance of about 2,000 feet in length by 400 feet in width, with possibly an extension of 50 or 100 feet more, would perhaps cover the gound.

Q. Extending in width and length?

A. Yes, sir.

Q. Take the station of Merrillon—this map which has been introduced in evidence on behalf of complainant. Did you cause this map to be made under your direction?

A. Yes, sir.

Q. State as accurately as you can what these lines denote and what the character of the business requires it to be done at Merrillon at the present time and also in the future, and what road the business is done with.

Objected to by counsel for the defendants so far as it relates to the future business of the road, and objection overruled by the master; to which ruling of the master defendants' counsel then and there duly excepted.

A. We are at present transporting coal received at Green Bay by this road with dock facilities very small and inadequate to
601 the storage of the room here. We are receiving this coal and dispatching it to St. Paul for the present by the way of Merrillon. It is our intention to construct transfer coal-sheds at this point to store our coal here and distribute the same as orders are received from the St. Paul region, and to do that work I went on the ground myself to stake out the side tracks and these transfer sheds located with three side tracks on each side of the centre track running up to the centre of the depot, and have the unloading done from buckets and coal-cars—to transfer them cheaply by gravitation—by fall.

The MASTER: The centre tracks are elevated tracks?

A. Yes, sir; and this outside line (indicating) is a connection with the Chicago, Minneapolis & St. Paul Line to our point with the

Green Bay, Winona & St. Paul at that point where we transfer our business by switch-cars.

Mr. CASE: Is there any other business besides coal handled between those two roads?

A. Yes, sir; large quantities of lumber and also quantities of——

Q. Flour?

A. And flour, as well.

602 Q. In your opinion as a railroad expert, then, is that land which you indicate by lines upon the map necessary for the business at the present time at that junction point and for business that may be done in the future?

Objected to by counsel for the defendants so far as it relates to the future business of the road. Objection overruled by the master; to which ruling of the master defendants' counsel then and there duly excepted.

A. In my estimation it requires it; every inch of it. We cannot construct and get out everything without we have the property to lay out.

Q. In regard to Merrillon: Then if the business would increase proportionately in the future would there be any more land at Merrillon needed over in this direction (indicating)?

A. The land would be required even at present. The town lies here, as these plats will show (indicating), the right leading from the town in this direction (indicating), and trains passing there as well.

Q. That land is wanted for necessary room for coal?

A. And for lumber for town distribution.

The MASTER: These tracks are open at present?

A. Yes, sir.

Mr. CASE: And this land would be needed for coal business (indicating)?

A. Yes, sir; for lumber and coal yards.

603 —. These sheds which you have indicated is for the increasing business?

A. Yes, sir; and the distribution of coal consigned to points in the northwest; and these coal-sheds would be used in addition to relieve our stockage at Fort Howard and stocking these transfer sheds and distributing from there to relieve us here.

Q. Then the road needs not only the land indicated by this line here, but also additional land?

A. Just as marked on the map for coal and lumber yards.

Q. State as accurately as you can about the amount of land which is needed at Black Creek for business at the present time and for business in the near future.

A. I cannot call any special requirements to mind at Black Creek just now.

Q. Do you call anything more to mind?

A. No, sir.

Q. At Blair—what is your opinion of Blair?

A. Our requirements should extend about the ordinary limits that is necessary for a station business.

Q. What is it you stated the ordinary limits to be?

A. From 1,800 to 2,000 feet in length by 400 feet in width.

Cross-examination by Mr. KELLY:

604 Mr. ELLIS: I move to strike out all the testimony of this witness relating to the extent of grounds which may be needed in the future business of the road beyond what is now necessary. I make that motion to strike it out before the cross-examination is entered into.

The MASTER: The motion is denied.

Mr. ELLIS: I move also to strike out all the testimony which has been received on the part of the complainant with reference to the extent of ground that may be necessary for the future business of the road beyond what is now necessary.

The MASTER: The motion is denied.

By Mr. KELLY:

Q. Mr. Case, the complainant receiver in this case, is the general manager of the new organization, is he not—the Green Bay, Winona & St. Paul railroad?

A. Yes, sir; I believe so. He was elected by the board of directors vice-president and general superintendent.

Q. Then the complainant receiver has charge of the organization at the present time?

A. Yes, sir.

Q. As officer-in-chief?

A. Yes, sir.

Q. What relation do you bear to the complainant receiver?

A. He is my father.

Q. What office did you hold under the complainant receiver?

605 A. I held the office, previous to his discharge—about a month, I think—as chief engineer and general freight agent.

Q. When was the complainant receiver discharged?

A. I do not mean the discharge of the receiver, but the transfer of the Green Bay & Minnesota property to the Green Bay, Winona & St. Paul road.

Q. Then we understand that you held the office under the complainant receiver for about a month prior to the transfer of the property to the new organization?

A. Yes, sir.

Q. And that office was that of chief engineer and general superintendent?

A. General freight agent.

Q. What office do you now hold, Mr. Case, under the new organization?

A. The same.

Q. You have been testifying, I understand, as an expert, alleged. Say what has been your connection with railroads in the past.

A. My connection has been as assistant engineer principally in the engineering department of the International & Great Northern road. I was principally assistant engineer of that road pending the course of construction; on the Delaware, Lackawanna & West-
606 ern railroad. I was assistant engineer of that road, and also had charge of work on the construction of the Bergen tunnel, and when severing my connection with the engineering department I was general superintendent and manager of the Sussex railroad, of New Jersey.

Q. What roads were you the operating officer of, or one of the operating officers?

A. I have just stated my operating capacities of one road, the Sussex railroad, of New Jersey.

Q. And how long were you in charge of the operation of that road?

A. About four years.

Q. What is the length of that road, including main line and branches?

A. About 38 miles, I think.

Q. Then, until you became connected with this complainant receiver and the new organization, your experience as an operator of railroads was limited to the Sussex road, was it?

A. Handling of trains and moving of the business on railroads—yes, sir; it was wholly connected with that.

Q. Then when you were acting as engineer-in-chief and assistant engineer you had nothing to do with the operating of these roads?

A. The roads I have previously mentioned?

Q. Yes.

607 A. No, sir; but I observed my instructions from our chief engineer and in consultation with the general manager of these roads relative to the amount of property and side tracks and room required, and I had charge of the International road; in fact, supervising the laying out of side tracks and towns and their facilities for doing the business relative to the operating of the road.

Q. But you had no connection with the business proper of the road?

A. No, sir; not with the transportation part of it.

Q. You stated you were assistant general freight agent or general freight agent of the Green Bay and Minnesota road about a month before the property was transferred?

A. Yes, sir.

Q. Had you ever any experience before as general freight agent of a railroad?

A. Not in the capacity of general freight agent; in the capacity of a manager of a road.

Q. I understand that; manager of the Sussex road?

A. Yes, sir.

Q. At what time was this property transferred to the new organization, of which your father is now officer-in-chief?

A. I think the 15th of October.

Q. And since the 15th of October, then, you have been in the employ of the new organization as assistant general freight
608 agent or general freight agent?

A. I have.

Q. When was this road built, Mr. Case?

A. What road do you refer to?

Q. The present road, of which you are the general freight agent.

Objected to by counsel for the complainant, because the witness has stated that he has only been connected with the road about a month. Objection overruled by the master; to which ruling of the master complainant's counsel then and there duly excepted.

A. I cannot give that.

Q. Then I understand from your testimony that prior to your connection with the road, a month before the property was transferred, you knew nothing of the business of the road personally?

A. No, sir.

Q. What was the business of the Sussex road, of which you were the manager, Mr. Case?

A. Principally transportation of coal and iron ores and some lumber traffic.

Q. How many stations were there on that road?

A. About ten stations.

Q. What were the size of the side tracks at those ten stations?

A. The exact length of them?

Q. The exact length and width.

609 A. Well, the average, I suppose, about 700 to 1,000 feet in length and our width varied from 80 feet to 150 feet, but our handling of cars upon that road was different from handling cars on these Western roads, owing to the fact that our heavy locomotives could not handle the tonnage that they can on these Western roads constructed with ordinary side-track facilities. We could handle matters with less room there than we can here. Our freight trains run off more.

Q. I understand you, Mr. Case, to testify as to the length and width of side track?

A. Yes, sir; I did.

Q. Then your testimony is predicated on your observation and nothing else?

A. On my experience with the International & Great Northern, which was altogether for a period of seven and a half years pending its construction of 5½ miles of road at that time and of that road's business that I am testifying about of the requirements of that road. The property that we used at that time would come wholly under the same requirements here.

Q. But you speak from observation and not from experience, as you had nothing to do with the freight traffic of those roads to which you have just alluded?

610 A. I speak from the points that we acquired. The general manager, in consultation with the chief engineer, concluded that we needed this amount of room on that road and that the business required it.

Q. Mr. Case, you said something about the coal business of the road; explain what the coal business of the Green Bay, Winona & St. Paul road is—how many tons have passed over that road within the last twelve months.

A. Well, I cannot call anything back within twelve months.

Q. I will take the last six months.

A. I should think we transported over the road in the neighborhood of 10 or 12 thousand tons during the last six months.

Q. And where did that coal go to?

A. To points on the Chicago, Minneapolis & St. Paul road—principally to St. Paul.

Q. By what station?

A. By the way of Merrillon.

Q. Was that coal transferred at Merrillon?

A. No, sir.

Q. Did it go through in the same cars?

A. Yes, sir.

Q. How much of that 1,000 or 1,200 tons of coal were transferred or delivered at Seymour?

A. Not any of it.

Q. How much at Black Creek?

A. Not any.

Q. How much at Manawa?

A. I do not think any at that point.

611 Q. How much at Blair?

A. I do not think any at that point.

Q. How much at Whitehall?

A. I think we have distributed coal along those different points, but in small lots. I could not speak intelligently on this subject without reference to our books in regard to this matter.

Q. Well, how much do you presume, then, from your best knowledge and best recollection, has been distributed at Blair, for instance, during the last six months?

A. Well, I could not state at all whether any amount, or if any at all, without this assistance.

Q. And about how much at Arcadia?

A. If we take the coal that is expected to be transported over this road—bituminous coal which the managers of this road distribute along the line of the road and the anthracite coal coming from the mines in Pennsylvania, and it is for the requirements of that business that I say that the road should necessarily have the amount of room that I state in my evidence.

Q. Were you never in the coal business, Mr. Case?

A. No, sir; I have laid out coal shutes, in connection with

612 stocking coal, to hold coal in reservoirs waiting the disposition of tide-water orders on the Delaware, Lackawanna & Western road.

Q. How much coal passed over the Sussex road, of which you were the general manager, in any twelve months during which you were connected with it?

Objected to by counsel for complainant and objection overruled by the master; to which ruling of the master complainant's counsel then and there duly excepted.

A. I cannot tell, close.

Q. Give your best recollection, please.

A. Well, I should judge, from 70,000 to 75,000 tons a year.

Q. Then, notwithstanding 70,000 to 75,000 tons a year passed over the Sussex road, of which you were the general manager, and notwithstanding the side tracks were but 800 to 1,000 feet in length and from 80 feet to 100 feet wide, the side tracks were sufficient for that amount of business?

A. Yes, sir; but the bulk of that coal went to a large furnace that we had on the road. The side track at that point would cover a distance of altogether in the length and used for the delivery of the coal—that would cover a distance of about a mile, I
613 should think.

Q. Are there any coal furnaces on the line of the Green Bay, Winona & St. Paul road?

A. There are not; no, sir.

Q. You have spoken about the intention of some parties to distribute coal on the line of this road. Will you please state who these parties are?

Objected to by counsel for complainant and objection overruled by the master; to which ruling of the master complainant's counsel then and there duly excepted.

A. John I. Blair, W. E. Dodge, and Samuel Sloan.

Q. Is the Green Bay, Winona & St. Paul Railroad Company, as a company, interested in any coal mines or any coal traffic, except as carrier?

A. The Green Bay, Winona & St. Paul road is not interested in any coal companies that I know of.

Q. Then I understand that these parties who intend to do this enormous business are other than the railroad company itself? It is a fact, is it not?

A. I suppose they do the business as individuals.

Q. Does any contract exist, to your knowledge, between these private parties and this railroad company which would compel these private parties to do this enormous business in the future?
614 A. Not to my knowledge; no, sir.

Q. Mr. Case, what is that class of coal like which you have testified to worth at this point; anthracite coal, I think you stated?

A. Well, I have never made any inquiries relative to that; I do not know as I can give any price in regard to that; there is, in fact, two or three prices that one could make—wholesale price, jobber's price in coal, and retailing price; I am unable to give those figures.

Q. Now, Mr. Case, you said that you are the general freight agent of this new organization, and that during the last six months about 10,000 tons of coal was transported over this line. Now, are you able to state at what price that coal can be delivered at these different stations, including freight?

Objected to by counsel for complainant as irrelevant and objection overruled by the master; to which ruling of the master complainant's counsel then and there duly excepted.

A. I am not in a shape to state the price delivered; I know nothing only relative to our price of freight for transporting the same; I know nothing about the value of the coal delivered.

Q. Then I understand you are unable to answer me in re-
615 gard to the price of coal delivered at different points along the line of this road?

A. I am, sir; the price fluctuates from month to month, and in addition to that I am not in the coal business.

Q. Do you know, Mr. Case, as an officer of this new organization, and as having been connected with the property that went in the hands of the receiver, do you know anything about the value of wood on the line of this road?

Mr. Case: I think this cross-examination is taking wide altitude, and I object to it.

The Master: I think it is proper. Is the question the amount of facilities needed at a particular station named to do the business? Now, the source of information to which I am necessarily limited are testimony of witnesses and personal examination. Now, I think that so far as the testimony of witnesses is concerned that it is proper for me to listen to statements under oath of competent gentlemen who state their knowledge of the needs of the road in reference to the wants of the community at a given place. Now, among the wants of a railroad it is stated that coal-sheds are wanted at the station near Merrillon. Transportation of coal, everybody knows, is a regular, legitimate railroad busi-
ness, and the witness states that they need facilities for
616 that business, and the question is, assuming that to be true that they do need facilities, the question is what the extent of those facilities are. That is the question for me. Now, any testimony that will throw light upon that point I am disposed to receive and consider. Of course, a person can imagine a very wide range for it, and if counsel should endeavor to make that range unnecessarily and unreasonably wide I should try to stop it; but what it seems to me comparatively — to answer, under the circumstances of the business of the road, is in regard to the extent of the facilities. I should say that a railroad in a prairie country supplying a community that used wholly coal would necessarily require larger facilities for handling coal than a railroad whose business was supplying a community that didn't use coal to the same extent. In one case larger facilities would be required than the other. Now, if the gentlemen will confine themselves within the limits I have indicated we can get along without any difficulty; so you may answer the question, Mr. Case.

To which ruling of the master complainant's counsel then and there duly excepted.

A. I do not know. I have nothing to do with that. I
617 know nothing of the value of wood only from hearsay.

Q. This road runs through a timber country for a portion of it, does it not?

A. Yes, sir.

Q. And along its line for 100 or 150 miles there is a large amount of timber, is there not?

Objected to by counsel for complainant and objection overruled by the master; to which ruling of the master complainant's counsel then and there duly excepted.

A. Yes, sir; but this timber has been burned down to a great extent. There is some timber, but not of good quality.

Q. You speak now of timber located immediately on the line of the road?

A. Yes, sir.

Q. Within a range of twenty rods, is that destroyed?

A. I do not know.

Q. I hand you, then, Complainant's Exhibit No. 1, which purports to be a diagram made by yourself or under your direction, indicating the possible future wants of the railroad at Merrillon. State under whose direction you made or caused to be made this diagram.

A. I was directed by the vice-president of the road to go to Merrillon and examine the ground to see whether we had adequate facilities there to do our present business, and was also instructed at
618 the time or, in fact, went with the vice-president over our grounds here at Fort Howard where coal is discharged from the depot onto our cars, and — shown to me very clearly the inadequate facilities we had for stocking coal there, and was instructed by him to go to Merrillon and see what room we required there at that point, and in as short a time as possible to erect these transfer sheds with a view of storing this coal as it was received from vessels here at Fort Howard, and stock there, and then to distribute from that point to points in the north, as ordered.

Q. Under whose direction did you make or cause to be made this diagram?

A. The vice-president of the road.

Q. Who is vice-president of the road?

A. Timothy Case.

Q. Did the vice-president instruct you to indicate on this particular piece of land what you thought was necessary for the future business of the road?

A. No, sir.

Q. How came you to locate on your diagram these alleged needed coal-sheds at this point?

A. Because that ground is unoccupied as it stands and in good shape to grade our line with very little expense. The point here on the north side (indicating) is occupied by buildings; and also a track
619 running in connection with the Chicago, Minneapolis and St. Paul road running to Neillsville, that is operated over here (indicating), was laid out for a side track for transfer business between the two roads; and this point over here (indicating) also is

another side track, and there are some buildings standing there as well. Owing to the fact that the ground was unoccupied, it was in my mind——

The MASTER: Do I understand that you made this location after this connecting track was in (indicating)?

A. Yes, sir.

Mr. KELLY: How happened you, Mr. Case, to locate these sheds at Merrillon—that is, I mean on your diagram?

A. Well, of course the bulk of our coal is going to St. Paul and the Northwest by the way of Merrillon, and that our grounds that we have here at Fort Howard being so small and having so little room to stock the coal, as it comes in 1,000-ton lots and upwards, by vessels, we had to have some room on the line of this road where this coal could be stocked and ordered forward, as directed, in car-load lots, from either our docks here or at Merrillon.

Q. Why could not those sheds be located an eighth or a quarter of a mile east of Merrillon as well as at Merrillon?

620 Counsel for complainant objects to this line of cross-examination and objection overruled by the master; to which ruling of the master complainant's counsel then and there duly excepted.

A. It would not be judicious, owing to the fact that the switch between the two roads would necessitate that amount of trackage between the two points.

Q. I notice, Mr. Case, on this diagram that the first coal-shed on the main track of this road is a considerable distance from the track. Why is it so located on your diagram—that first coal-shed?

The MASTER: Let your question show the distance.

Mr. KELLY: State the distance between the main track of the road in question and this first coal-shed, as designated on your diagram.

A. It is a distance of about 125 feet from the centre of the track to the outside boundary of our nearest side track. The reason that the sheds were located there was owing to the fact that the freight depot was moved over on that side (indicating). There are roads running down in here (indicating) for parties receiving and shipping freight to have access to this depot. The road that we encouraged there was no room to turn around and back up as
621 required. For that reason the sheds were put further south of the line, leaving a distance of about 125 feet, being ample room to drive to and back up and discharge or receive freight from the wagons.

Q. You stated, Mr. Case, that you have handled over your road, of which you are the general freight agent, 10,000 or 12,000 tons of coal during the last six months, the bulk of which went to points north of Merrillon via another road. Were these facilities necessary for the transfer of that amount of coal during the last six months?

A. No; for the amount that we handled then it was not necessary; no, sir; but in the future, or what was to follow, and the detention of our cars caused from the transportation of coal to St. Paul and points West, we find that it took these cars so long to get back again on their south-bound trip, and if we had these transfer sheds at that

point, where we could have the coal transferred there cheaply into other cars, why we would save the use of our own rolling-stock. We cannot supply other roads with rolling-stock to transport this same coal. That was what these coal-sheds are wanted for. The same policy is carried out at the East by the roads that handle coal.

622 Q. Have you contracts, Mr. Case, for the transportation of coal for any time to come?

A. We have got contracts relative to the transportation of this coal. They are unlimited.

Q. How long are the contracts good for?

A. Generally when a general freight agent issues a contract they expire with the calendar year.

Q. Then I understand that no definite amount is contracted for in the future for you to carry on this road?

A. No, sir.

Q. Who are the shippers of this 10,000 or 12,000 tons of coal which you stated you have transported over your road within the last six months?

Objected to by counsel for complainant and objection sustained by the master.

Q. I will ask the question in a different way. You have named certain parties who are intending to do a large coal business over this road. Are they the parties who are the shippers or owners of this 10,000 or 12,000 tons?

A. No, sir.

Q. What is the population of Merrillon, Mr. Case, at the present time?

A. I could not speak understandingly of that. I should judge, from the looks of what I have seen of the town, that it is from 600 to 800.

Q. How much coal did that 600 to 800 inhabitants use during the last six months?

623 Objected to by counsel for the complainant and objection sustained by the master.

Q. I will ask the question in a different way. How much coal did you deliver at that station for local purposes during the last six months?

Objected to by counsel for the complainant and objection overruled by the master; to which ruling of the master complainant's counsel then and there duly excepted.

A. Not any, to my knowledge.

Q. I want to call your attention to the Plaintiff's Exhibit No. 2, which purports to be a diagram of what the road needs for the future in the way of depot ground and coal-yards at Seymour. I think you stated that it was made by yourself or under your direction?

A. Yes, sir; it was.

Q. How much land—the extent, please—is indicated on this diagram over and above the present depot facilities at Seymour?

A. That I could not state. I do not think that any of this property outside of this track—this present line (indicating)—has been assigned to us for railroad facilities, but in my mind that room is necessary as is marked there (indicating) for stock-yards, and for coal and lumber yards, and eventually a warehouse over there (indicating).

624 Q. On this diagram how much land have you dedicated for coal-yard purposes?

A. In what way do you want me to answer the question?

Q. I notice on the diagram that you have indicated certain lands as being necessary for coal-yards.

A. Yes, sir.

Q. Give us, please, the length and width of the vast amount which you think it is necessary for that purpose.

A. For coal-yards?

Q. For coal-yards; yes, sir.

A. The coal-yard there laid is about 300 feet in length by about 200 feet in width.

Q. Will you please state the amount of land you have designated as being necessary for cattle yards, giving the length and width as near as you can?

A. About 100 feet in length by 125 feet in width.

Q. How many tons of coal did you deliver at Seymour during the last month for local purposes?

A. I am not able to answer that without reference to the books of the company.

Q. Did you deliver any coal at Seymour during the last six months for local consumption?

A. Not to my knowledge.

Q. State how many car-loads of live stock you have handled at Seymour during the last six months.

A. That is impossible for me to state.

625 Q. Have you handled a single car-load during the last six months at Seymour?

A. I think we have; I would not be positive of that.

Q. Have you handled five car-loads there within the last six months?

A. Well, I think that what stock is at present shipped from Seymour is not shipped in full car-load lots; I think they are delivered to us in small quantities—that is, a few head at a time.

Q. Then you are not willing to swear that you handled a single full car-load of live stock from Seymour within the last six months?

A. No, sir.

Q. Have you contracts in the future for any definite amount of coal to be delivered at Seymour or for the handling of live stock at Seymour?

Objected to by counsel for complainant and objection overruled by the master; to which ruling of the master complainant's counsel then and there duly excepted.

A. Our contracts, as I stated before, are on special contracts for coal, stock, and lumber, and close when the year closes.

Q. Have you contracts for any definite amount of coal or live stock to be handled there at Seymour?

626 A. Not to my knowledge.

Q. That answers the question. That is all.

The MASTER: Mr. Case, will you state the width—the entire width—that you have marked on that ground at Seymour?

A. The greatest width at the starting point is about 400 feet, and there are other points the width shows to be about 250 feet, I should judge.

Q. How long is the ground—that is the width of 400 feet—what is the length?

A. About 600 or 700 feet.

Q. What is the length of the side track there, and does that show the extent of the side track?

A. That is the contemplated side track; about 1,300 or 1,400 feet.

Mr. KELLY: Mr. Case, you have testified in regard to the possible needs of the road for depot facilities in the future at Whitehall, and in that connection you have stated that business there is increasing. Will you state the ratio of increase during your connection with the company, or give us any statement which will indicate upon which you predicate your opinion?

A. Well, I have — at Whitehall and examined the ground and our facilities there, and conversed with the agent located there, and also referred to weekly reports as made out by himself,

627 and think the increase at that point, over and above the same time corresponding to last year, an increase of about 20 to 25 per cent. of business in freight—wholly freight; nothing relative to passenger business.

The MASTER: I understand that is the increase for the year?

A. Yes, sir; for the year; corresponding to the same time last year.

Mr. KELLY: You mean, Mr. Case, this is the increase during the whole year, or for a week or month?

A. No; the increase corresponding to the same month last year?

Q. What month was that, Mr. Case?

A. I think I was out there in the month of October.

Q. Then you testify that the increase of business at Whitehall station for October, 1881, exceeded to the amount of about 25 per cent. the business of October, 1880?

A. Yes, sir; that is my information obtained from talking with the agent relative to the business that is being done there.

Q. Did you make any comparisons for any other month except October?

A. No, sir.

Q. Did you compare October, 1881, with any other October except that of 1880?

628 A. No, sir; I merely took the business from what was informed me at that station and also what shippers at that point informed me about the business increasing there.

Q. That is not your personal knowledge of the matter, Mr. Case?

A. I cannot give personal knowledge relative to any of this information; it is only from what I have been informed by the agent and shippers at that point in talking with them relative to the room that we require there and what we will require there shortly.

Q. Then you are unable to state, Mr. Case, whether the business for October, 1879, or 1878, was greater or less than that for October, 1881?

A. I am unable to state.

Q. Mr. Case, you have stated as one reason why you think the possible need of the future may require you to have more land at Merillon that the facilities for transfer-ing coal are inadequate at this point?

A. Yes, sir.

Q. Will you state what the facilities at this point are for receiving coal, storing, and transfer-ing?

A. What way do you wish me to state that—in regard to the amount of acreage we have here, or getting to our docks here?

Q. We desire to know, Mr. Case, in the general way,
629 what the present facilities of the road are at this point for receiving, storing, and transfer-ing coal at Fort Howard.

Objected to by counsel for complainant and objection overruled by the master; to which ruling of the master complainant's counsel then and there duly excepted.

A. We have a water front, accessible by rail; that has a water frontage, with track laid in such a way that we curve down to it, and that trackage extends, I should think, for a distance of about 300 or 400 feet, and we unload coal at that point from the vessels into our cars, and also have dockage room there for storing coal, and I suppose we have facilities for storing from 3,000 to 5,000 tons of coal.

Q. How much dock frontage does the company own on the river, Mr. Case?

Objected to by counsel for complainant.

The MASTER: I do not think, Mr. Kelly, you need go into the matter of title. The question is as to what they enjoy, what amount they have, what they are using.

Mr. KELLY: I will change the question, Mr. Case. How much dock frontage is this company using or how much has it the
630 privilege of using at that point, meaning Fort Howard?

Objected to by counsel for complainant and objection overruled by the master; to which ruling of the master complainant's counsel then and there duly excepted.

A. It has a frontage of about 800 to 900 feet, I should think.

Q. How much of that frontage is docked at the present time.

A. About one-half of it.

Q. And about how far is it from the front line of that dock to the main track of the railroad?

Objected to by counsel for complainant and objection overruled by the master; to which ruling of the master complainant's counsel then and there duly excepted.

A. About 75 to 80 feet.
Q. Is this 75 to 80 feet all docked over?

Objected to by counsel for complainant and objection overruled by the master; to which ruling of the master complainant's counsel then and there duly excepted.

A. Width do you refer to?
Q. Yes, sir.
A. Yes, sir; it is all docked over a distance parallel to the water front of about 400 feet.

631 Q. Do you not understand my question, Mr. Case? How far is it from the front line of this dock back to the main track in front of the depot?

Objected to by counsel for complainant and objection overruled by the master; to which ruling of the master complainant's counsel then and there duly excepted.

A. Well, you mean, then, from the water's edge—from the dock—clear up to the main track of the railroad?
Q. I do.
A. Well, I should think—I never measured the distance, but I should think it is a distance of about 600 or 700 feet.
Q. Then, if I understand you correctly, Mr. Case, this company is using or has the privilege of using about 900 feet of dock front and running back about 600 feet, do you say?
A. Well, I should think about 500 feet.
Q. Could not that extend—meaning the piece of land 900 feet long and 500 or 600 feet wide—could not all that be utilized for coal-sheds?

Mr. CASE: I think this thing is getting ridiculous. I object to this. There is no relevancy in these matters.
The MASTER: I will submit testimony, subject to your objection.

Objection overruled by the master; to which ruling of the master complainant's counsel then and there duly excepted.

632 A. The location of our main line running on to this dock property and the property in connection with the main line is very badly situated—that is, we run onto this property very near at right angles. We have to make an abrupt swing; and this property is necessary for the building of coal-sheds, which course, as a practical engineer, I would lay out—laying out coal-sheds—and would most decidedly lay out transfer sheds and storehouse and dispatch coal from the course by downfall or gravitation.
Q. You are an engineer, Mr. Case, and as such I presume you have done some draughting. Will you please have the kindness to draught a rough sketch of the dock, Mr. Case, giving us the frontage and the tracks in relation to the main line?

Objected to by counsel for complainant and objection overruled by the master; to which ruling of the master complainant's counsel then and there duly excepted.

A. (Making sketch as requested.) This is a rough sketch. Our main line comes in here (indicating), and here are our side tracks (indicating).

Q. Indicate the points of the compass, Mr. Case, please, on your diagram.

633 A. This piece of property, as I have been informed, belongs to the company (indicating). This water front on the river here at this point (indicating) is where we have our platforms and transfer facilities for unloading from the vessels to the cars.

Q. Will you please designate the extent of the frontage and depth in figures?

A. That is about—I am not able to swear to the extent, because I don't know anything about boundaries of this property, only from what is——

Q. I notice on your diagram, which you have just kindly made us, that you have the dock front as about 900 feet?

A. Yes, sir.

Q. Please state how much of that is already timbered—meaning by that how much of that frontage is now utilized for docks.

A. About 400 feet in length by 75 to 80 feet in width.

The counsel for complainant objects specially to any testimony of any kind or character being introduced as to the amount of land which is needed for railroad purposes at any of the stations except those which are mentioned in the opinion of the court and which are in controversy here. Objection overruled by the master; to which ruling of the master complainant's counsel then and there duly excepted.

634 The WITNESS: My nearest recollection is about 400 by 80 feet on water frontage.

Mr. KELLY: Then, Mr. Case, I understand that while the company is using or has the privilege of using a piece of dock property 900 feet front by about 600 feet deep the company is utilizing of that extent of ground only a piece of about 400 feet front by 80 feet in depth?

A. They were to have that piece specified by that distance, that being only accessible by——

Q. Answer the question fully.

A. I say that the amount occupied, 400 by 80 feet, is the amount only which is accessible to us with our tracks, and those tracks cannot be arranged in such a shape so as to occupy any more than 400 feet frontage.

Mr. CASE: To require any more you would have to have docks there, would you not?

A. We cannot get to the docks along the frontage at all. There is a sharp curve there to reach that, 400 by 80 feet.

Mr. KELLY: Mr. Case, as a railroad engineer, state whether or not that dock front could be extended.

Objected to by counsel for complainant and objection overruled by the master; to which ruling of the master complainant's counsel then and there duly excepted.

635 Q. As a railroad engineer, Mr. Case, state whether or not that dock front could not be extended, it now being only 400 feet, and the company have the privilege of using 900—could it be extended north?

Objected to by counsel for complainant and objection overruled by the master; to which ruling of the master complainant's counsel then and there duly excepted.

A. It could be extended, but it could not be reached. We could continue this line (indicating), and run right to the river front, but we would not have any parallel of approach to it in any case so that we could discharge or unload cars. That point, in my mind, could be utilized for an elevator, and the elevator face this way (indicating), and cars running east and west. The elevator could face outside (indicating), but that cannot be used as transfer dock property.

Q. You have had experience, had you not, as railroad engineer, running in curves and laying out connections and side tracks?

A. Yes, sir.

Q. Considerable experience in that line, have you not?

A. Yes, sir.

Q. State, then, as a railroad engineer and an expert, whether or not there is any possible way of running any other side tracks along part of that frontage which is not now used.

636 Objected to by counsel for complainant and objection overruled by the master; to which ruling of the master complainant's counsel then and there duly excepted.

A. We could reach the river, as I say, by putting side tracks in there, but we could not extend our water frontage any.

Q. Well, now, Mr. Case, what would be the obstacle in the way of extending the track out in this direction, for instance (indicating), a little east of north, running your trains onto the present dock and then backing onto this frontage indicated by the lines I have just drawn?

A. That can be done by putting in parallel lines for switching. If we have got too many loaded cars we have got to put empties off in there.

Q. Supposing, Mr. Case, that there were no cars standing on that track, what would be the obstacle of running a portion of the track located in that way (indicating)?

A. That track would have to be occupied for a track.

Mr. CASE: Has that track been built yet?

A. No; it is only a proposition.

Q. The track to be contemplated in the future?

A. Yes, sir.

637 The MASTER: The question was whether or not the track could be extended in that way.

Mr. KELLY: State, Mr. Case, what is south of the line indicated on the line of that diagram of yours—that is, on the south side of this dock property that has been referred to in your direct testimony.

A. The channel of water.

Q. State if the slip has not been dredged in for some distance.

Objected to by counsel for complainant and objection sustained by the master.

Q. Mr. Case, would it be possible to extend a track down on this property, so that the south side of it would be utilized for dock purposes?

Objected to by counsel for complainant and objection overruled by the master; to which ruling of the master complainant's counsel then and there duly excepted.

A. Well, I wish to state, from the outlines that we present here, both in regard to distance and also in regard to curvature—shows on the boundary lines distances and curvatures throughout—that I would not like to base my opinion as an expert as to what can or cannot be done, and also in regard to answering the question of the length of the slip, how far it extends up here (indicating) on
638 the north side of this property, and whether it has been dredged out or whether we have the property frontage on the slip between the boundary of our dock and the main line up here (indicating) as being our property, I am unable to say, and for that reason I cannot swear as to the nature of that slip.

Q. Then I understand you, Mr. Case, to testify that you cannot state whether or not it is practicable to put in more side tracks so that more of that ground could be utilized for that purpose?

Objected to by counsel for complainant, and objection overruled by the master; to which ruling of the master complainant's counsel then and there duly excepted.

A. I have sworn that way. I swear here, as far as my knowledge is concerned relative to the property that we now occupy, that considering the curvatures required to put these side tracks in that the amount of property that we have utilized there for the dispatching of this coal from these vessels is as large as we can practically cover for that purpose. That I will swear to.

Q. Do you know the exact boundaries of this property at Fort Howard?

A. No, sir; I do not; I cannot get any positive evidence relative to that; only I have not the exact boundary, outline, or any-
639 thing as to how the property lies.

Q. Mr. Case, this 10,000 or 12,000 tons of coal that you have testified to as having been handled by this road within the last six months was received from vessels over this dock?

A. Yes, sir; approximate figures for the time.

Mr. CASE: I object to this cross-examination of Fort Howard or any other point, and I would like to read from this order and in-

corporate it in my objection (reading as follows): "Ordered by the court, That the complainant is entitled to recover from the defendant- the title and possession of all such lands mentioned in the bill of complaint as are required by the railroad company for right of way, depot buildings, and other necessary railroad purposes as described and limited in the charter of the company, and that the bill of complaint as to all other portions of the lands described therein be dismissed. For the purpose of ascertaining what lands are required for right of way, depot grounds, and other railroad purposes, as above stated, and also the extent and value of any improvements made by defendants, this cause is referred to Honorable James H. Howe, as special master of this court, who will take such additional proof as either party may offer upon
640 reasonable notice." I object to any examination of property at Fort Howard or any other station except that which is mentioned in the bill of complaint.

Mr. KELLY: We desire to offer this rough diagram made by the witness in evidence, as it will be necessary to explain undoubtedly the testimony as taken down by the reporter.

Objected to by counsel for complainant on the ground that it is incompetent, immaterial, is not shown to be accurate, is not based upon any surveys, and is wholly based upon hearsay.

Mr. KELLY: If the court please, the diagram is a portion of the complainant's testimony.

Objected to by counsel for complainant on the ground that it is irrelevant and on the ground as above stated. Objection overruled by the master; to which ruling of the master complainant's counsel then and there duly excepted.

(Diagram offered in evidence and marked Exhibit X X.)

Q. Mr. Case, how many freight cars has this road now in use which can be utilized for coal business?

Objected to by counsel for complainant, and objection overruled by the master; to which ruling of the master complainant's
641 counsel then and there duly excepted.

Q. I desire to know, Mr. Case, how many cars this company now owns which are adapted to the coal business in the future.

A. Well, I cannot answer that question accurately. I could give the approximate number.

Objected to by counsel for complainant as not cross-examination.

The MASTER: I hardly think that is proper testimony, Mr. Kelly.

The WITNESS: I wish to refer to my testimony. I do not think that I stated that it was on account of the lack of cars. It was on account of the loading of the cars and distributing throughout the West and Northwest, they using the cars up there off the line of our road. I do not think that my evidence in any previous examination will show that it was owing to the lack of freight cars.

The MASTER: I understood you to say that you wanted to avoid the necessity of transferring cars to other lines.

A. To keep our own cars on our own road as much as possible we objected to the service they were put in in doing this business.

Q. You preferred to keep the cars on your own line to going on your connecting lines; to transfer the coal you desired to have
642 these coal-sheds?

A. Yes, sir; that is our intention; that we can do the same business with less facilities by the use of transfer sheds.

Mr. KELLY: Mr. Case, supposing you have or had ample facilities for receiving, storing, and transferring coal at Fort Howard, would or would it not be cheaper to store it or transfer it at that point than at Merrillon?

Objected to by counsel for complainant, and objection overruled by the master; to which ruling of the master complainant's counsel then and there duly excepted.

A. Relative to the point which would be cheaper for the interest of the road? Of course, that is a question which would determine the question of cost, would it not, to be the interest of the road? But ask me the question—he asked me the question whether it would not be cheaper to stock this coal here than at Merrillon. Of course, as far as the question which is the cheaper, here or at Merrillon, that is the convenience of the company.

The MASTER. In the long run which would be best?

A. In the transportation of merchandise over our road we haul immense amounts of grain to Fort Howard station, which are put in the elevator. The grain comes in box-cars, and
643 those cars are empty after they are discharged of grain, and these same cars can be run down onto the coal-sheds up to this dock property, as shown in that exhibit (Exhibit X X), and loaded with coal at that point and taken out to Merrillon, and at that point they are transferred and sent further west to reload with grain. Consequently we have the transportation of those cars on our road. It is by far more economical for any railroad company to load cars in both directions; whereas if we stocked this coal here, why it would go out as orders came in from throughout the Northwest—sent all the way to St. Paul without transfer.

Mr. KELLY: Now, Mr. Case, assuming that Merrillon is your depot, your basis of supplies for coal, you would be obliged to take the coal from Fort Howard to Merrillon, would you not, for the purpose of storing it there?

A. Any management would handle the road judiciously at Merrillon. I would have transfer sheds there and transfer all this coal from Merrillon consigned to points west or to points north and use the Fort Howard stock grounds here for transfer
644 of coal wanted at intermediate points.

Q. That is not answering my question. My question is this: If Merrillon is made the place at which the coal is stored—is made the coal-shipping point of the road—it would be necessary to convey that coal from Fort Howard to Merrillon, would it not?

A. Yes, sir.

Q. State what kind of freight the cars that are shipped with coal to Merrillon will be able to load back with from Merrillon.

A. From Merrillon station immediately or any station in that immediate vicinity?

Q. Merrillon or immediate vicinity.

A. The same cars could be loaded coming back with grain, with flour, lumber, or any other merchandise offered for shipment to Fort Howard or points on the Chicago & Northwestern.

Q. When is this large coal business to begin?

Objected to by counsel for complainant, and objection overruled by the master; to which ruling of the master complainant's counsel then and there duly excepted.

A. That I am unable to state. That is to be determined by the management of the road when they are ready to proceed with that business.

645 Redirect examination by Mr. CASE:

Q. The transportation of coal has already begun on this road?

A. Yes, sir; the transportation of coal; yes, sir.

Q. That is a new business?

A. Yes, sir; it has started since I have been connected with the freight department.

Q. And you say it is, then, in its infancy?

A. Yes, sir; it is in its infancy.

Q. Who did you say is interested in that coal business in the East?

A. John I. Blair, Samuel Sloan, William E. Dodge, and others.

Q. Do they constitute coal companies in the East?

A. Yes, sir.

Q. To what extent? How many coal mines do they own? How many millions of dollars is there invested in coal by these companies in the East?

A. The coal is probably steam-worked, and there is perhaps fifty millions of dollars invested in them.

Question and answer objected to by counsel for the defendants, and objection overruled by the master; to which ruling of the master defendants' counsel then and there duly excepted.

646 Q. About how much, in your opinion, is invested in coal?

Objected to by counsel for defendants, and objection overruled by the master; to which ruling of the master defendants' counsel then and there duly excepted.

A. I am unable to state definitely the amount of funds invested in the sale interests and mine interests and coal, but I suppose——

Q. How many millions, in round numbers?

A. I stated about fifty millions.

Q. How many coal mines do they own?

A. That is impossible for me to state.

Q. Twenty?
A. Oh, yes; all the way from 35 to 40.
Q. Have they got twenty millions invested in coal?
A. Possibly twenty, and they may have forty.
Q. What connection have these men got with this road?
A. They are directors of this road.
Q. Are they the principal owners of this road?
A. As I understand it; yes, sir.
Q. What road are they interested in heavily in the East?
A. The Delaware, Lackawanna & Western road.
Q. Supposing the coal was shipped on that road from Green Bay, what use is to be made of this road?
647 A. To distribute their coal for them and increase their sale facilities—that is, selling more coal and that — whatever prices they may determine on themselves.
Q. Then if they ship coal over their road in the East to this road here they would ship it out, would they not?
A. Yes, sir.
Q. The road would realize money from it as well as they realize money from the sale of coal?
A. Undoubtedly; yes, sir.
Q. Then, in your opinion as a railroad expert, isn't it the most natural thing for railroad men—men interested in railroading and coal works—to enhance the value of their own property?

Objected to by counsel for defendants, and objection overruled by the master; to which ruling of the master defendants' counsel then and there duly excepted.

A. From my experience and observation of coal mines and coal interests in the East I find that the coal interest at certain periods of the year, sometimes running as far as three months, they have been compelled to shut down their sale of coal and stop mining on account of the markets being overstocked with coal—Eastern markets.
648 During the last three or five years coal capitalists have discovered the fact that they can work off the surplus product into the Western market and keep their mine running the whole year round, and thus increase the channel through which they can send their coal not previously sent, with the exception of the last few years past. That, in my mind, is the real reason why they are anxious to forward and distribute this coal.
Q. What proportion of the mining on the Delaware, Lackawanna & Western road does the coal business bear to it?
A. Well, I could not answer that accurately. I can only give an approximate answer.
Q. That will do.
A. I should judge from 65 to 75 per cent.?
Q. About how many millions a year does that run, in money or in tons, either one?
A. What do you mean; their earnings on coal?
Q. Their earnings on coal.

A. That I cannot state accurately any more than I could the previous question. I think it is somewhere in the neighborhood of eighteen to twenty millions.

Q. Suppose half of that coal owned by those parties and shipped from that road should be sent over the Green Bay, Winona
649 & St. Paul road, is it possible—would the present facilities that you now have to move the business be anywhere near sufficient to do the business?

Objected to as incompetent by counsel for the defendants, and objection overruled by the master; to which ruling of the master defendants' counsel then and there duly excepted.

A. Why, no; the amount of property that I have specified at the different points would not be adequate to do the business.

Q. Would it do half of the business; suppose one-tenth, would it be adequate?

A. I suppose if we done one-tenth of the business that it would require every inch of ground we have or claim we ought to have.

Q. But would it not require more?

A. Well, that is too much of a supposition.

Q. Answer the question.

A. I do not know that it would require more. It would require us to have more, possibly.

Q. Now, what proportion of interest do these men bear in this company that they do in the Delaware, Lackawanna & Western Company?

A. They are radically the same.

Q. Radically about one-tenth invested in this company
650 that there is invested in the Delaware, Lackawanna & Western Company—the men that originally invested in the road?

A. It is perhaps less than that. One-twentieth in this road that they do in the D., L. & W. road.

Q. Along the line of the D., L. & W. isn't there coal-yards at every station?

A. At every station; yes, sir.

Q. Where their coal is handled?

A. Coal weighed and distributed to patrons along the road and to any parties purchasing coal.

Q. If they conduct their business upon this road which they own the same as on the D., L. & W., which they own, are not coal-yards of large size required at every station?

A. Yes, sir.

Q. And that, you think, with the other land needed, would not be any more than enough?

A. Not any more than enough; no, sir.

Q. Now, you have been down the Trempealeau Valley in viewing the line of this road. What is raised in the valley?

A. Principally grain.

Q. Is there much timber there?

A. Very little; that is, along the line of the road.

Q. Is there any demand for coal there?

A. Yes, sir.

651 Q. Where is the present wheat elevator of the Green Bay, Winona & St. Paul road—on this dock property?

A. No, sir.

Q. Where is it located?

A. On the property, I believe, belonging to the C. & N. W.

Q. Does it cost any money to go there?

A. Yes, sir; we are paying transfer charges on every car that is discharged at that elevator.

Q. Would it be cheaper, then, for them to put up their own elevator upon this dock?

A. Most assuredly. It would more than pay the interest on the money that we are paying the C. & N. W.

Q. If this wheat elevator was built on this property there would be no room left for coal-sheds and for tracks?

A. I do not think there would.

Recross-examination by Mr. KELLY:

Q. In regard to this wheat business that you testified to, to whom is this wheat consigned that comes over the road?

A. To Cargill & Van.

Q. Cargill, then, runs this C. & N. W. wheat-house?

A. They own the property; yes, sir.

652 Q. Then the wheat is taken to the C. & N. W., because the parties who own that elevator are the consignees?

A. Yes, sir.

Q. You testify that this business, meaning the coal business, is now commencing. Will you state what you mean by that?

A. I mean that previous to my connection with the road that we had transported very little coal over the road; nothing more than our own supplies, supplying our own motive power; and since my connection we have made connection with outside parties who are shipping coal over the road in the Northwest.

Q. Have these parties, so designated in the testimony—meaning John I. Blair and others—have they shipped any coal over your road?

A. No, sir.

Q. Then when you said this business had already commenced you did not mean that these parties had yet done any business over the road?

Mr. CASE: Or their agents?

A. I mean that a party who is acting as the agent of the Delaware Coal Company here shipped over the road. I wish to correct myself on that. They have been shipping, but not in quite as large quantities as other parties are going to; but they have
653 started some shipping, acting as agents of the Delaware Coal Company.

Q. How many tons of coal have passed over your road within the last six months shipped and owned by these parties?

The MASTER: He stated about 10,000 tons.

The WITNESS: 10,000 or 12,000 tons.

The MASTER: He said the agents of those parties had shipped.

The WITNESS: Yes, sir; I wish to state that the agents themselves had shipped. I, myself, construed the question as coming from these gentlemen that I referred to. They are shipping direct.

Mr. CASE: These parties have their agents, and they have been shipping over the road?

A. Yes, sir.

Mr. KELLY: How many tons have they shipped on the road within the last—I mean owned by these parties—which was shipped to their agents within the last six months?

A. Well, I should think upwards of three thousand tons, I suppose.

Q. What do you mean by agents? State the official capacity which these agents, so-called, bear to John I. Blair and those other parties named.

654 A. Well, I know nothing about the nature of the business they have to do with them. They handle the Scranton coal that is owned by the Delaware Coal Company.

Q. Do you know whether or not the so-called agents own this coal or whether they are shipped to them, owned by John I. Blair and other parties?

A. I know nothing about the relations they have between them; only thing I know is that the same coal, perhaps in the neighborhood of 3,000 tons out of this lot of 10,000 or 12,000, came over the road as coming from those mines.

Q. Might not these consignees own that coal?

A. Possibly.

Mr. CASE: You only had to do with them as agents of the Delaware Coal Company?

A. Yes, sir.

Q. As Western agents of the Delaware Coal Company?

A. Yes, sir.

Q. And went upon the road at the time?

A. Yes, sir; ever since the business commenced.

Q. Were these parties—did you know that the arrangements with Sloan was arranged by these parties?

A. I have been informed by — that these parties had had a conversation with Sloan relative to the matter, and Sloan left the management of this arrangement to them.

655 Q. And did the business commence to move shortly after that interview?

A. Yes, sir.

Mr. KELLY: But as I understand it, Mr. Case, you don't know whether these consignees owned the coal before it arrived here or not?

A. I do not know, but I know they were acting as their agent; but whether they were selling on commission or in what manner they were dealing I am unable to state.

Q. State when these diagrams were prepared by you—Complainant's Exhibits 1 and 2.

A. They were prepared some time early in the month of November.

(Whereupon a recess was taken until 2 p. m.)

NOVEMBER 29TH, 1881—2 p. m.

E. C. CASE, recalled on behalf of complainant, testified as follows:

Direct examination by Mr. CASE:

Q. Which is the lightest month in the year in regard to business on the Green Bay, Winona & St. Paul road; any kind of business; general business; the freight business?

Objected to by counsel for the defendants, as the witness is
656 incompetent, only having been connected with the road a few months. Objection overruled by the master; to which ruling of the master defendants' counsel then and there duly excepted.

A. From an examination of the books and the records in the office of the freight department I have observed that June, July, and August are about the lightest months we have.

Q. What is the custom among the railroad companies, who have the transportation of coal, among other business, in regard to stocking that coal; what month do they generally use?

A. The D., L. & W. railroad transport the great bulk of their coal during the summer months, and stock it at Port Marks, a distance of about 45 miles from tide-water, on their own road. Those stock-yards hold, I suppose, 2,000,000 or 3,000,000 tons of coal, and that coal is stocked there awaiting orders for transportation to be delivered during the summer and fall on the New Jersey Central. They also handle largely at Perth Amboy, where they have immense stock-yards, and on the Lehigh Valley.

Q. Now, during what months is the wheat business generally done on the Green Bay road?

657 A. Upon an examination of records in the freight office I find that the month- of November, December, January, and part of February about the heaviest months.

Q. About what is the proportion of the wheat business to the coal business in regard to the amount paid per car?

A. The percentage or tonnage? The net gain?

Q. Yes, sir; wheat as against coal.

A. Well, I should think that the earnings that we obtain from our wheat traffic per ton is more than double what we gain per ton out of the coal.

Q. Does the business in the fall require all the cars you can obtain for the wheat business?

A. Yes, sir; at that season of the year. In the fall months this road particularly is very scarce of cars.

Q. Then if coal were shipped during the months of June, July, and August, to stock at Merrillon would you have use for all of the cars which are now in the possession of the company for the wheat business?

A. In my mind we would have in transporting this coal during the summer months when our traffic is light. The transporting of
658 this coal to Merrillon in the summer months and stocking it there would relieve the transportation of coal in the fall months when our grain shipments are heavy.

Q. Then, in your opinion, would it or would it not be money in the company's pocket?

A. It would; yes, sir.

Q. Which would give you the use of your cars for wheat in the fall?

A. Yes, sir; that tonnage in the summer months, if we could do it when the tonnage is light, would assist us and give us an abundance of rolling-stock in the fall when most required.

Q. What difficulty have you most experienced since commencing this coal business during this fall in regard to sending cars upon other roads? Do you need those cars in the wheat business?

A. I found that cars loaded with coal here are forwarded to St. Paul and from thence forwarded by other roads way up in the Northwestern territory on the Manitoba road, perhaps 600 or 800 miles or over from Fort Howard. Cars would be forwarded with a lot of coal amounting to 100 or 150 tons at a time and would be gone two or three weeks before we knew it. During that time we suffered very much for the use of these same cars—this same fall.

659 Q. Now, in your opinion as an expert and as also being familiar with this business on this railroad, about what amount of coal would you have stocked at Merrillon and about what amount would you have—that is, as to proportion—would you have stocked at Fort Howard? You testified that you could make some use of having coal stocked here at Fort Howard to take coal west to local points on the road and bring back wheat, and you testified further that the coal which you need at Merrillon would be coal — would go off our road and upon other roads and require the use of cars. What proportion would you have stop at Merrillon to that stocked at Fort Howard for the convenient, economical, and necessary business of the road—that is, what proportions?

A. It is very difficult to say what proportions would be carried and stocked at Merrillon for distribution. I should judge, from the distance and the territory—the distance that we forward coal—that at least—well, perhaps, seven-eighths of the coal would be carried and stocked at Merrillon, and perhaps one-eighth here. One-eighth of the coal would be used for local points on the line of our own

660 road and points west of Merrillon in the valley, and the coal forwarded from Merrillon north to St. Paul and Northwestern territory would be stocked at Merrillon.

Q. That, in your opinion, would be making the most use of the cars and bring the most money for the use of the cars?

A. It would.

Cross-examination by Mr. KELLY:

Q. Mr. Case, you have testified to considerable knowledge of the method of doing this whole business. Is it not a fact that the business is done in this way generally; that parties—coal dealers in the West—are in the habit of going East and buying their stocks of coal, and that these coal companies to which you have referred do not and have not established depots in the West at all, but sell at

the mines or at their Eastern points to Western shippers and dealers, who furnish transportation West by such lines as is for their interest to ship by? Is not that the ordinary way of doing the coal business of the West?

A. The coal business of the West has been done in the past principally that way, with the exception of some instances where the Lehigh Valley road, the Delaware Coal Company, and the
661 Pennsylvania Coal Company have, I think, during the past one or two years established agencies throughout the West and located at different points, who sell the coal direct to consumers, negotiating the freight transportation with connection with the railroads and in connection with their company, and deliver the coal on the ground at such and such figures.

Q. You testify, then, as I understand, that the coal producers usually sell their products at the East to dealers in coal who deal on their own account?

A. They do business both ways, but I have my recollection of matters and observation in the West that in the past the establishing of agencies during the last year or so has increased with great rapidity relative to that object, more so than the entire sale, out and out, of coal dealers. That is the standard through the East among the coal dealers that handle their own coal.

Q. Have you any personal knowledge that these parties to whom reference has been made, John I Blair and others—have you any knowledge that they intend to establish agencies in the West for the sale of their coal?

662 A. I have been informed by Mr. Blair that it was the intention of distributing coal through the West here on the line of the Green Bay road the same in every way that they are distributing coal along the line of the Eastern roads. I have been informed that that was the intention, and I have been laying out depot grounds and side tracks and facilities to be able to complete that matter in time.

Q. You stated this morning, Mr. Case, in answer to a question on the direct examination that if one-quarter of the product of certain coal mines were shipped over this road that the facilities now desired would be insufficient. State now if that one-quarter, whatever it may be, was shipped via Merrillon to points north and west of Merrillon that would make any difference in depot grounds as applied to Seymour, Black Creek, and Manawa.

A. If all went to points north and northwest of Merrillon the depot grounds at Seymour would not enter the question at all.

Q. How about Black Creek and Whitehall?

A. No, sir; not if the coal was consigned beyond there.

Q. Have you any personal knowledge about the coal to be distributed at Seymour or Black Creek or Manawa or any other of
663 the stations named?

A. No positive knowledge, with the exception of what Mr. Blair had informed me relative to distributing coal on the line of the Green Bay road in the same manner as it is distributed in the East on their own lines—shipments on their own lines where they

have ample coal rooms and yards and distribute this coal mostly to patrons, and in many instances they have agents sell the coal and make return to the company for them.

Q. Can you state an instance where they distributed coal to or stored coal at points where there is no market for sale?

A. Point Marks, along the line of the D. L. & W. road, is a point where they stock, I suppose, 4,000,000 or 5,000,000 tons of coal. They haven't any immediate market right near there; the nearest is tide-water. They hold the coal there in reserve for shipments as ordered for tide-water, and they are transporting their shipments when their business is light in the summer months.

Q. It is a fact that at Port Marks coal is stored there and kept there for other points and not for local distribution?

664 A. Distributed for points principally of tide-water in the market.

Q. It is stored at Port Marks because it is a convenient place to distribute for other points?

A. Yes, sir.

By Judge POWERS:

Q. I will call your attention, Mr. Case, to your testimony relative to Arcadia. State, Mr. Case, in what direction the railroad runs through Arcadia?

A. In regard to the points of compass?

Q. Yes.

A. Well, I don't know the exact points of compass there, Judge.

Q. Well, is not it substantially southwest or northwest?

A. Possibly it is.

Q. It is a fact; I am simply getting at this to get the lay of the ground.

A. Yes.

Q. Is it not also the fact that Main street, in Arcadia, runs nearly east and west, but a little northwest and southeast?

A. Well, I could not answer in regard to that; I suppose it is possible; it may run that way; I cannot deny it or assume that it does.

Q. Main street crosses the railroad track just west or southwest and in front, near to the depot, does it not?

A. Yes, sir; I believe it does.

665 Q. This is substantially the railroad track running north (indicating)?

A. Yes, sir.

Q. Now, Mr. Case, how much land do you state is needed by the railroad company for railroad purposes at that point?

A. About the same amount as I have previously sworn to that it is necessary for railroads to have relative to any station doing business—distance, 1,800 feet in length by 400 feet in width.

Q. That is the amount you think would be needed there?

A. I certainly think so; I think that the present layout of the ground is very far from being sufficient to do the business.

Q. That 1,800 feet in length would run along the line of the main track of the road, would it?

A. Yes, sir.

Q. Besides it would be parallel substantially to the main line?

A. Yes, sir.

Q. And the 400 feet in width would be across the main line at right angles, would it?

A. Yes, sir; a measurement taken would cross the main line at right angles; yes, sir.

Q. Now, at the point how should that 400 feet in width be
666 laid with reference to the main track—that is to say, how much of the 400 feet in width should be upon each side of the centre of the main track?

A. It is always customary by all engineers who lay out depot grounds to have the main line of the road the center line of the property. It would be virtually 200 feet on each side.

Q. Well, is that your judgment of the manner in which it should be laid out at that point?

A. From the lay of the ground and from my recollection of the place when I was on the ground, I should say the ground was in every way adapted for laying out the property in that way.

Q. As far as the surface of the ground is concerned, it is reasonably favorable on both sides, is it not?

A. Well, more favorable on the southwest side.

Q. Well, Mr. Case, you have stated that 200 feet on each side of the centre line of the main track would be a proper way to lay it out. Now state, with reference to this map, as near as you can, where the west or southwest end of that 1,800 feet would come.

667 A. I cannot tell on this map, for the scale is not down. I might lay it down, but that would be wholly inaccurate.

Q. I will ask you the question in a little different form. Should that 1,800 feet all be northeast of Main street or should it cross Main street and part of it be northeast and part southwest of Main street?

A. I think I answered that question before—that the centre line of the road would determine the point of measurement, measuring each side.

Q. You do not understand my question; that is not the idea. Here, up and down (indicating), is the main track and, as I understand you, the depot ground should extend for 1,800 feet.

A. Yes, sir.

Q. Now, what I want to know is whether that 1,800 feet in length—it is the length now, not the width—whether that 1,800 feet in length should all be northeast of Main street or whether part of it should be southwest and part northeast?

A. The property from the location—that would be taking the town. Main street as the central point, I should judge the location, if the ground would permit, would extend—Main street as
668 the central point—900 feet each side, but off there (indicating) the ground is low and side tracks could not be erected without much expense; better move it either way, wherever the ground is adapted for it; that would be the location of any engineer who would go on the ground and locate it as such.

Q. What I am trying to get at here is to find out what the complainant wants?

A. That would be determined wholly upon the condition of the ground and the nature of everything on the ground—the ground itself.

Q. Are you not well enough informed as to the station there to be able to determine that fact now?

Mr. CASE: In other words, mark that 1,800 feet wherever you want it.

The WITNESS: If the ground is all uniform, as I said before, and all good, solid ground, not requiring any filling and grading to complete side tracks——

Mr. CASE: The witness here has examined that land, under instructions, to determine how much of the land in controversy was required; I think that fact should be borne in mind because some of the land is sold to a third party.

The MASTER: You can bring that out in your examination.

669 WITNESS: If the condition of the ground would permit I would establish Main street as the centre point and extend 900 feet in each direction. If the ground southwest of Main street was too low and marshy, and if the property northeast, in this direction (indicating), was the property of the defendants, who are in shape to give the property over as our rights as we demand here, I should then locate the ground more in this direction (indicating). My recollection of the ground about where this switch comes in is very low, marshy, and we have a water-line there of three to five feet, somewhere in that neighborhood, which would necessitate in putting up side track or putting up warehouse, to do considerable grading to make that ground accessible to us.

Judge POWERS: Can you state, Mr. Case, on the theory that upon the southwest side of the railroad track there was 200 feet taken—can you state what buildings would be upon the land so taken and laying north of Main street—what buildings in here (indicating)?

The MASTER: I do not quite understand that question.

670 Judge POWERS: Upon the theory that the land taken from the southwest side of the track extends to 200 feet from the center of the main track, what buildings would be upon the land so taken and lying north of Main street? What buildings in here (indicating)?

A. There are buildings in there now standing. I don't know by whom they are owned or upon whom these limits would infringe; I don't know anything about that now; I do not know the condition they are in; there are buildings in there, quite a number of them.

Q. Can you name them?

A. No, sir; I cannot.

Q. You can name some of them, can you not? Mineral Springs Hotel, for one?

A. Yes, sir; Mineral Springs Hotel, for one. I think there is some sort of a store facing on the side.

The MASTER: On the north side of Main street?

A. Yes, sir; I think so; I don't know positively about that; also some outbuildings and outhouses standing there (indicating); I think I am mistaken about the store; I would not like to put in evidence on that; I am not familiar enough with the buildings.

671 Judge POWERS: About how much land, Mr. Case, expressed in acres, would a piece 1,800 feet by 400 amount to? I don't care about being particularly accurate, but about.

A. I think it is over 15 acres.

Q. Can you state, Mr. Case, about what the population of Arcadia is?

A. No, sir; I do not know the population.

Q. Well, does it exceed 1,000 or 1,200?

A. It may, as far as my knowledge is concerned. I never inquired into the question of the population of the town—the population of the town in relation to side tracks.

Q. And Blair is a somewhat smaller place, is it not, than Arcadia?

A. Possibly.

Q. Now, what business is done at either or both of these places that require so large an amount of depot ground—a matter of 15 or 16 acres?

A. What business?

Q. Yes.

A. In the first place, to do business you have got to have room to put things in shape to transact your business, and in doing that you have got to have room for stock-yards, you have got to have room for lumber yards, you have got to have room for coal-yards, room for warehouses; and to be able to cover the ground properly

672 here you have got to have room for all these appliances.

Q. What is the necessity, Mr. Case, at either of those towns of having room for lumber yards?

A. Why, in time dealers will sell lumber there. They receive lumber in amounts and deliver there, and lumber yards at any of these points, of course, would be located on the line of the railroad, so the railroad can deliver the lumber without the cost of transferring in town to any other point away from the line of the road.

Q. In speaking of lumber yards, in this connection, do you mean lumber yards out of which the retail trade is carried on?

A. Lumber is a very bulky substance, and in many instances lumber would have to be discharged immediately from the cars, and cars are put on the side tracks, and if the railroad company has room enough for delivering and stocking this lumber it will save the delivery from the car and distributing it all over town. It is merely as a place to discharge lumber from the cars, and then the retail dealer can haul it to his yard or to any other point he wishes, only to relieve the car.

Q. What I want to understand is, whether you mean by the word lumber yard, in connection with these depot grounds, as you

673 have used it—whether you mean a yard for carrying on the retail trade, or simply a place to unload?

A. Simply as a place to discharge the lumber and have room to pile it up in shape for the jobbers to have it himself as he hauls it away from our property.

Q. Well, is that upon the theory that the railroad company itself is going to be the owner of the lumber and bring it there and pile it up to be sold to dealers, or is it upon the theory simply that the railroad company acts as transportation agent and brings the lumber as it is consigned, to dealers?

A. Simply as transportation agent that delivers the lumber to patrons and others, and they want room to unload and discharge the lumber properly from the cars, there is room to do it. Why, if we have grounds to stock the lumber as it is received we would do that for their convenience rather than delay the cars.

Q. Then it amounts to this, what you refer to as lumber yards, in this connection, it is simply like a place to store—like a storehouse only?

A. To discharge freight.

Q. It is not necessary to have it covered up?

674 A. Lumber is very bulky, and it is a great deal safer to handle it if we have the room to discharge it.

Q. I ask you, Mr. Case, whether the lumber business is ever done in any country or in any place in that way?

A. Yes, sir; the roads I was connected with in the East—railroad companies—owned land, and we discharged lumber. There were lumber yards there alone to the extent of five to ten acres. Of course, there were side tracks put in on these lumber grounds as well. The company owned the ground.

Q. The company unloaded the lumber on the ground and left it there for the consignees to haul it away; is that it?

A. No, sir; the parties unloaded it to whom it is consigned to; they unloaded it on the company's property.

Q. And then they hauled it away at their leisure?

A. According to the facilities they have. Sometimes dealers will have 10 or 15 cars of lumber and only one team to haul his lumber away with; to haul that lumber away would take him three or four days. He can take it to his own yard or where he wishes to. I am referring, in making this comparision, to where they use 100

675 cars of lumber where we use one here.

Q. In your judgment, Mr. Case, how much of these 15 or 16 acres, either at Arcadia or Blair, would be required for lumber purposes that you have described?

A. Well, perhaps one acre would answer now, and, perhaps, five years from now five acres would be required.

Q. Do you know how much ground it takes in the ordinary, common way to pile a million feet of lumber?

A. Well, it takes very little ground if they wish to go to the expense of piling it pretty high; it is only a question of piling it.

Q. As men would ordinarily handle it?

A. As lumber is unloaded promiscuously from the cars by consignees it takes a great deal more room than if it is piled systematically. It is different how lumber is stocked up, whether it is piled

up permanently or tumbled up temporarily; it makes a very great difference in that way.

Q. Well, you have spoken of the necessity of coal-yards at these points; now, in this connection, what do you mean by a coal-yard?

A. I mean the ground to stock coal by any dealer who may take the agency of handling the coal there—of stocking different
676 grades. There is nut stove coal, nut coal, and possibly lump coal, and in laying out, taking and occupying land for the stocking of this coal of the different kinds, it occupies quite some place in area; and in addition to that there has got to be room for scales, wagon-ways to reach in there, for wagon-ways opening in and out, so that every point is accessible to the wagon, and also room enough to drive on the scales, either going in or out, and in making that this coal-yard could be laid out; it certainly would occupy quite some ground.

Q. Well, then, you mean this, do you: In case the Lackawanna Coal Company, or any other coal company, should appoint an agent at either of those towns to sell and distribute coal that the railroad company would need grounds sufficient to do that business?

A. I do.

Q. Then, if I correctly understand you, it seems that the land that is wanted for coal-yard purposes is land for the Lackawanna Coal Company or some other coal company, or John I. Blair, to do business on?

A. I merely take the assumptions of the ground required, based on the same amount of ground they occupy themselves on
677 their Eastern coal-lands. At every station along the line of their road they have ample facilities of discharging this coal in coal-yards. They appoint in many instances agents, who sell their coal on commission, and in some instances they sell to agents at a margin, whichever arrangement the agent may make with them, and there is the ground occupied by their coal-yards, and they make their sales in connection with the unloading of the coal.

Q. You do not contemplate, if I understand you correctly, at either of these towns that the railroad company shall enter into the business of retailing coal, buying and retailing coal, as a corporation, do you?

A. That is something for the managers of the road to decide upon, the system of doing it—something for them to decide. I have no knowledge of the exact manner in which they are going to do it, whether they are going to sell coal direct to dealers or going to appoint their agents themselves.

Mr. Case: You are speaking simply of the room to discharge coal and lumber?

A. Yes, sir; to discharge the coal in the yard. They do that on all the Eastern roads.

678 Judge Powers: What do you mean by coal-yard? Is it ground, a space, where the business of retailing coal is carried on there by the railroad company or anybody else?

A. Yes, sir.

Q. At these two places I have mentioned, Blair and Arcadia, there would be no demand for it—no occasion to store coal for the purpose of transporting it to other points, would there?

A. Not to my knowledge; no, sir.

Q. The only need of coal-yards there would be for the local trade?

A. Yes, sir; around the country and demands of the town wholly, I should judge; yes, sir.

Q. Do you know whether, as a matter of fact, at the present time there has been any considerable demand for coal even at Arcadia or Blair?

A. I have not been advised relative to anything of that kind; no, sir.

Objected to by counsel for the complainant, and objection overruled by the master; to which ruling of the master complainant's counsel then and there duly excepted.

WITNESS (continuing): There are other officers of the road who are better informed on that subject than I am.

679 Q. Well, to your knowledge, has there been any trade in coal so far at those points?

A. Not to my knowledge.

Q. Whatever business there has been at those points so far has been done with the facilities of depot grounds already there, has it not?

A. Yes, sir.

Q. Well, has there been any special inconvenience for the want of room so far?

A. There is very little room for extending the business there.

Q. I am not speaking of the extension of business. I am speaking of the business—that is, place required so far?

A. The side track at present is too short, and if I was manager of the road I should put in another side track as soon as possible for passing trains.

Q. There is room to put that on the outside of the road?

A. I am not aware that there is. I laid out a track there temporarily, and I was informed that it ran onto property belonging to parties who are not interested in this suit, necessitating the company in putting the track in—to buy the property of other parties.

Q. How did that old side track that you laid out there—how did it run with reference to the depot and Main street?

680 A. Parallel with the main line.

Q. Was it north? Did it run northeast from Main street or on the other side of Main street?

A. It started from there (indicating on the map) and came up here somewheres (indicating), but I understood that the line ran onto parties owning the property that were not interested in this suit.

Redirect examination by Mr. CASE:

Q. Just look at this map again. Now, as a railroad expert, if you were sent out to examine the property at Arcadia and then that on the other side of the track (indicating), northwest of the track, that

the property belonged to third parties, and you were instructed by the officials of the road that you must lay out sufficient depot room upon property belonging to defendants in this action, where would you make your 400 feet run to; from the main track southwest, or would you make it run 200 feet each way along the proper channel, but not belonging to the defendants?

A. That would be everything owing to the size of the plat of ground I was instructed to lay out.

681 Q. Sufficient for depot purposes; instructed not to lay it on property owned by parties not interested in this suit?

A. All on one side.

Q. Did you run any line which would bring you direct to this hotel at the time you ran this line there?

A. No, sir.

Q. Did you examine the location of this ground there?

A. Yes, sir.

Q. How is it?

A. Easy grading; pretty nigh up to extending side tracks and constructing warehouses now.

Q. Now, if the property on this side belongs to the defendants, and you receive instructions not to lay lines off on the side that do not belong to the defendants, how many feet would it be from this side southwest—how many feet would you make your line so as to make it 400 feet in width?

A. It would throw it all on one side to take that amount of property.

Q. That is all.

Mr. KELLY: I ask that the testimony in regard to these particular lands be stricken out.

Objection overruled by the master; to which ruling of the master defendants' counsel then and there duly excepted.

By the MASTER:

682 Q. Mr. Case, are you acquainted with the grades—the maximum grades—upon your lines? Can you state what they are?

A. Well, I have never examined the profiles closely since I have been out here. I can only state approximately from riding over the road.

Q. You cannot tell definitely?

A. No, sir. I never examined the profiles closely for that information.

Q. Can you tell the number of freight cars—loaded freight cars—that constitute a train within the capacity of your engines?

A. Yes, sir; about 25 cars is considered a train.

Q. 25 freight cars?

A. Yes, sir.

Q. Are the grades on your line of that general character that you can start a full train-load from your western end, for instance, and draw it through to your eastern end?

A. We can handle that size train right through with these with the locomotive. There are sections of the road where we could handle perhaps double the train with the same engine.

Q. What I want to ascertain here is whether in the daily practical operation of your line you started a train from your La Crosse or Marshland end and run it through to Fort Howard with the same number of cars or whether you had occasion to double
683 up or anything of that sort to get over cars.

A. Well, we double up occasionally on grades. That is the exception rather than the rule.

Q. Then your grades are such that a freight engine will take 25 loaded cars and go through?

A. Yes, sir.

Q. Either way?

A. Either way.

Q. Now, what length of side track is required at a station to enable you to put a standing train on the side track while another train passes on the main track?

A. Well, what length to pass a train of 25 cars and an engine?

Q. And an engine. What would be the length of side track so as to do it with entire ease and comfort?

A. About 1,195 feet—about 1,200 feet, we will call it—nothing else being on the side track.

Q. So 1,200 feet would accom-odate one of your freight trains while the other was being engaged?

A. Yes, sir.

Q. Is it your custom on the road at those stations that are in question here to have your depot between the main track and the side track? Is that your rule?

A. Yes, sir.

Q. The main track and side track?

A. Yes, sir.

684 Q. Do you remember about the size of your depot buildings at those stations? Have you one or more than one? I mean is your passenger and freight under one roof or two?

A. Sometimes one, sometimes two, warehouses, sir.

Q. You haven't any uniform rule in that respect?

A. No, sir; well, we haven't established any standard relative to that; we will undoubtedly establish a standard when we get to work to put up new buildings.

Q. As it stands to-day you have no uniform rule?

A. No, sir; as erected at present there is no uniform standard used at all.

Q. At any of these stations on your road have you duplicate side tracks anywhere—side tracks upon both sides at present?

A. Yes, sir.

Q. At what stations do you remember?

A. At Fort Howard is one.

Q. No; I mean at any of these seven stations in controversy.

A No station except Merrillon that I can call to mind.

Q. I don't remember now whether—is there a depot at Merrillon independent of the station-house?

A. Yes, sir; independent of the passenger depot, you mean; yes, sir, there is.

Q. That is which side of the Omaha track?

A. On the southeast side, I think.

685 Q. On the east side, as I would understand it?

A. Yes, sir.

Q. The eating-house, the hotel, etc., is on the other?

A. Diagonally across.

Q. Diagonally across?

A. Yes, sir.

Q. As I understand you, Mr. Case, *that* the tracks at Merrillon — on both sides, and on the west of the Omaha track you have a track or switch that makes a complete Y on the other side?

A. We have two tracks connecting the angle formed by the crossing of the two lines, but they are not a complete Y. The proposed line shown on the Merrillon map would complete the other part of this Y.

Q. That is all.

(Whereupon the complainant rested.)

Mr. KELLY: We wish to cross-examine Mr. Timothy Case. His direct examination has been introduced here.

The MASTER: Mr. Case, are you willing Mr. Timothy Case's testimony should go in this record?

Mr. CASE: Yes, sir; but Mr. Kelly has lost his opportunity for cross-examination.

Mr. KELLY: We ask to have Mr. Case here for cross-exam-

686 ination; he is in the city; he was here this morning, and we wish to cross-examine him.

Mr. CASE: Mr. Case is not here, but engaged in other matters, and I do not see but what his testimony has got to stand.

Mr. KELLY: Mr. Timothy Case has been here twice to-day. It is no hardship for him to present himself for cross-examination. It is only a matter of a few moments to send for him and cross-examine him, and we ask that they be ordered to produce their witness for cross-examination.

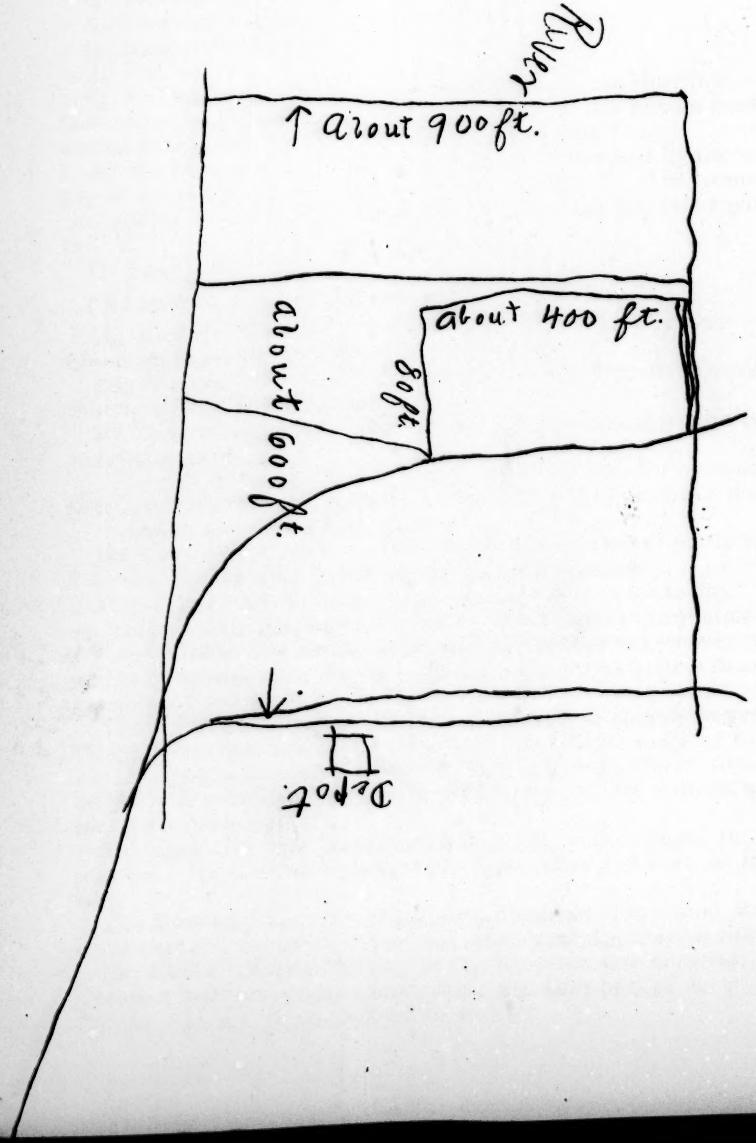
The MASTER: I have no power to compel the witness to be present. Whether a court commissioner has power, I have nothing to say, but as a special master, the position that I occupy, I have no power, unless you voluntarily produce the witness or the witness voluntarily produces himself.

Mr. CASE: He has been here, but he is now engaged in other matters. He is a vice-president of a railroad and as such he is very busy.

The MASTER: The only thing that I can do is to report the circumstances to the court. You can make your application there.

Mr. KELLY: We are willing to pay his costs and expenses. Mr. Case has been present in court during a greater part of the proceedings to-day and we ask that he be sent for.

Exhibit XX
introduced in the testimony of
C. C. Case.



687 Mr. CASE: We have refused to produce Mr. Case unless his costs are paid, unless properly ordered by the court, and also his expenses are paid. The time must be paid.

Mr. KELLY: We are willing to pay any court fees, if the court please.

Mr. CASE: I object to it.

Mr. KELLY: We desire to have the reporter record that we now make application to the court to order or request complainant's counsel to produce Mr. Timothy Case for the purpose of cross-examination, subject to such order as may be proper for the payment of his costs, attendance, and such other fees as are usual in such cases.

Mr. CASE: We object to producing the witness, inasmuch as he has testified here in chief. Defendants were represented by their attorneys and had an opportunity to cross-examine the witness and failed to do so; that they are estopped by their own laches in asking any relief from the hands of the court, as they have had their day in court.

The master requested the counsel for complainant to produce the witness, the defendant Kelly offering to pay the cost of subpœnaing the witness and of attendance in court and taxable costs
688 usual in such cases. The master being of opinion that he had no power to compel the attendance of the witness or to tax the costs, witness was not produced and examined.

Mr. KELLY: I now ask that this hearing may be adjourned until this evening or to-morrow morning, so as to have an opportunity of serving a subpœna on Timothy Case and obtaining his attendance for the purpose of cross-examination.

The MASTER: We will let the matter rest for the moment, and if there are any other witnesses present to be examined here we can examine them in the meantime and take up this question afterwards.

(Here follows diagram marked p. 689.)

690 GEORGE HILES, one of the defendants herein, recalled on his own behalf, testified as follows:

Direct examination by Judge POWERS:

Q. You are one of the defendants in this case, are you not?

A. Yes, sir.

Q. You are also the president of the Arcadia Mineral Springs Company?

A. I am; yes, sir.

Q. You heard the testimony, did you not, of the witness, Erwin C. Case?

A. Yes, sir.

Q. Now, in case it should be determined that at Arcadia the complainant in this case was entitled to receive from you and the Arcadia Mineral Springs Company, upon the southeast side of the track at Arcadia and the east side of Main street, a width of 350 feet from the centre of the main track and extending east, will you de-

scribe what improvements there are upon the land that would be so taken?

Objected to by counsel for complainant, and objection overruled by the master; to which ruling of the master complainant's counsel then and there duly excepted.

A. It would take the Mineral Springs House.

Q. What is the value of the Mineral Springs House as a permanent improvement?

691 A. It is worth $4,500.

Q. I will ask you, Mr. Hiles, if you built that house or caused it to be built?

A. I did.

Q. Are you acquainted with the value of property and building improvements in the vicinity of Arcadia?

A. I am.

Q. Now, you may state what other improvements would be taken in.

A. It would take in—after the mineral springs buildings would be Krumbick & Muir's and the Trempealeau County Bank.

Q. Those are buildings fronting on Main street, lying east of the Mineral Springs House?

A. Yes, sir; on Main street. They are part on 9 and part on 10 (examining map of Arcadia).

Q. Do you or either yourself or the Arcadia Mineral Springs Company own those buildings?

A. No, sir; we have no interest in the —.

Q. State whether you have had since this suit was commenced.

A. No, sir; I have not.

Q. What other property will come in?

A. Boorie Bros. & Hansil.

Q. Have you or the defendant, — Arcadia Mineral Springs Company, any interest in that?

Objected to by counsel for complainant, and objection over-
692 ruled by the master; to which ruling of the master complainant's counsel then and there duly excepted.

A. No, sir.

Q. Have you had since the suit was commenced?

A. No, sir.

Q. Those are the only buildings that come within the 350 feet?

A. It is my impression that about one-half of lot 7 will come in.

Q. What building is there there?

A. There is a brick block there.

Q. Do you own that or have any interest in it?

A. Yes, sir; the Arcadia Mineral Springs Company owns it.

By the MASTER: About one-half of the east half?

A. West half of lot 7. That would be as near as I could judge (examining map).

Judge POWERS: That, you say, is a brick block?

A. Yes, sir.

Q. What is the value of that brick block?
A. It cost us $4,000.

Objected to by counsel for complainant, and objection overruled by the master; to which ruling of the master complainant's counsel then and there duly excepted.

Q. What is it worth?

Objected to by counsel for complainant, and objection overruled by the master; to which ruling of the master complainant's
693 counsel then and there duly excepted.

A. It is worth $2,500, at least.
The MASTER: In giving these values do you value the building irrespective of the lots, or the value of the building and the lot?
A. Well, the value of the buildings—nothing for the lots.
Q. Not including the lots?
A. Not including the lots; no, sir.
Judge POWERS: Are there any other buildings that would come within those limits—or any other improvements?
A. My lumber yards and sheds, etc.
Q. Will you state what the improvements that you refer to as lumber yards, sheds, etc., what they consist of?
A. They consist of lumber sheds and tracks running in there—or side tracks back to the sheds.
The MASTER: Where are those, Mr. Hiles?
A. They are about 400 feet east of lot 7 (indicating).
Judge POWERS: East of Main street?
A. East of Main street; maybe a little more; maybe 500 feet east.
Q. North?
A. North, rather; yes, sir.
The MASTER: Then part of the land is not laid out in town lots?
A. No, sir.
694 Q. The land that is marked with a cross on this map (indicating)?
A. Lumber sheds are up in there (indicating on the map).
Q. Those would come within the 350 feet?
A. Yes, sir.
Judge POWERS: Well, you can state the value, in detail, as much as you can—of course, if they should not come in on measurement they can be left out—the value of the sheds, with the improvements.

Objected to by counsel for complainant, and objection overruled by the master; to which ruling of the master complainant's counsel then and there duly excepted.

A. Probably about $250.
Q. Well, are there any other improvements there?
A. No, sir; I do not think there are. I think that is all on this side.
Q. Can you state whether there are any improvements upon the land claimed at Blair in which you are interested?

A. Yes, sir.

Q. Well, give that in detail, as much as you can.

The MASTER: Have we any map of Blair?

Mr. CASE: We have a map of Blair, which has not been introduced in evidence. We will introduce it here for the use of the master; but, at the same time, we do not introduce it as showing the land claimed, but simply as a means of refreshing the memory of the witness and for the convenient reference of the master. We want the record to show that we want double or three times that.

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Map of the township of Blair, marked Exhibit No. 5 on the part of the complainant.

The MASTER: Now, go on, Mr. Hiles.

A. I have got Blair buildings, improvements, and sheds; lumber office and sheds that are worth $1,000.

Q. Is there a recorded town plat of Blair?

A. Yes, sir; it lays this way (indicating).

Mr. CASE: How far is it from the railroad track to where the office and sheds are?

A. Inside of the 350 feet. I don't know as it is.

Q. Give us those improvements in detail—separately—as near as you can. Of course, if they are not included we will leave them out.

A. I can't tell exactly about this. I should judge this to be 150 feet (indicating) and the depot there (indicating). Map Exhibit No. 5 shows depot grounds 169 feet in width on a three-degree curve, 1,233 feet in length on the inside and 1,351 feet on the outside.

Judge POWERS: Now, you have not stated yet. State in detail the value of those improvements which you think would come in.

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A. 200, the claim on each side from the centre.

Q. Yes, but take it that way (indicating).

A. I have my doubts of any improvements coming in.

Q. State what improvements are there—the improvements you referred to; whether that covers that or not.

A. The lumber offices and the lumber sheds—they are worth $1,000.

Objected to by counsel for complainant, and objection overruled by the master; to which ruling of the master complainant's counsel then and there duly excepted.

Q. Are there any other improvements?

A. No, sir; not belonging to me but belonging to others.

The MASTER: Are there any other improvements within the limits?

A. Yes, sir; there would be other improvements within the limits on this other side of the track here (indicating). It would not be inside of this that I marked out (indicating), but inside, 350 feet from the centre, would be the hotel building.

Judge POWERS: State, Mr. Hiles, whether you are acquainted with the lay of the land and surface, and so on, about the depot at Arcadia.

A. I am, sir, well.

697 Q. How would it be as to laying out the depot grounds, or a portion of them, upon the north or northwest side of the track?

A. If you will just come here I will tell you.

Counsel for complainant objects to this testimony, as witness has shown upon his previous examination that he has never had any experience whatever in the operation of railroads, is not an expert, and therefore is not competent to testify. Objection overruled by the master; to which ruling of the master complainant's counsel then and there duly excepted.

The WITNESS: Running up that way, here is the water-tank, right here; just about there (indicating) there is a piece of ground in there that is just as nice for railroad purposes as anything along on the road, if they need any more ground.

Objected to by counsel for complainant, and objection overruled by the master; to which ruling of the master complainant's counsel then and there duly excepted.

Cross-examination by Mr. CASE:

Q. How many warehouses are upon the ground at Arcadia for the business of the road?

A. Five.

698 Q. Are they standing on your land?

A. No, sir; not all of them.

Q. How many stand upon your land?

A. Only one of them.

Q. Who uses that?

A. Muir.

Q. Did you ever get anything from Krumbick & Muir for the use of it?

A. They paid me rent.

Q. Krumbick & Muir use it for their shipping with the railroad, do they not?

A. Yes, sir; let me amend that a little. I told them they might if they moved it a little farther from the Arcadia Mineral Springs Company.

Q. How near to the track is that—to the main track?

A. That is about 65 or 70 feet from the centre of the track.

Q. And the side track is just——

A. The side track comes just by it.

Q. And that is the property in dispute—the warehouse?

A. Yes, sir.

The MASTER: I understand you to say that these different buildings, the hotel and buildings on Main street, were not made by any of the defendants?

Mr. CASE: The hotel building, he says, was made by him,
699 and he owns the brick building on the west half of lot 7.

The MASTER (to the witness): Now, you stated what the value of the hotel was. I don't remember whether you stated——

A. $4,500.

Q. What was the value of the building occupied by Krumbick & Muir?

A. They did not ask me that.

Judge POWERS: Because none of the defendants had any interest in it.

The MASTER: They own everything, except that?

A. No.

Mr CASE: They own the brick building——

The MASTER (to the witness): The hotel building that stands upon lots 10 and 11 were built by the defendants and are owned by the defendants and are of the value of $4,500, as you say? Now, the buildings upon lots 8 and 9 were not built and are not owned by the defendants?

A. Yes, sir; that is so.

Q. The building on lot 7 was built by you and is owned by you?

A. Now, right here, Krumbrick & Muir—their building—their agricultural warehouse and the Trempealeau County Bank are on the east part of lot 10 and the west part of lot 9. Then come
700 Boorie Bros. & Muir. They bought all of lot 8 and east part of lot 9. Then comes a brick building on lot 7.

Q. That you built and own?

A. Yes, sir; that I built and own.

Q. What is that worth?

A. $2,500; I said it cost $4,000; it is worth $2,500.

Q. Now, the lumber yard that you spoke of further north; the sheds and office—those were built and are owned by yourself?

A. Yes, sir.

Q. I understand it now.

Judge POWERS: How is it as to that warehouse occupied by Krumbick & Muir? Is there a warehouse there that belongs to you?

A. It belongs to Krumbick & Muir. No; it don't belong to me.

Judge POWERS: This closes our case.

Mr. KELLY: We would ask for an adjournment until to-morrow morning, so as to give us an opportunity of subpœnaing Mr. Case. We desire to have his testimony.

At this point it was agreed that complainant's counsel should send for Mr. Timothy Case at once to be cross-examined by the defendant, Mr. Kelly, he to be cross-examined upon the direct examination filed in this case, and that no new matter will be brought out in his cross-examination by either party, and conditioned by the
701 counsel for the complainant that his cross-examination will be finished without adjournment, and that this will close this testimony in the case.

TIMOTHY CASE, the complainant herein, having been sworn and examined in chief heretofore, is produced for cross-examination by the defense as follows:

The examination-in-chief was first read to the complainant by his counsel.

Direct examination by Mr. KELLY:

Q. I notice by your direct testimony, Mr. Case, which has just been read, a copy of which I have before me, you were introduced as an expert in the operation of railroads, and as such qualified to judge of the needs of a railroad so far as depot grounds and side tracks are concerned. Will you state what your railroad experience has been? What was the first railroad with which you were connected?

A. My first railroad experience was with the Hudson River railroad.

Q. On what date did you become connected with that road?

Objected to by counsel for complainant and objection over-
702 ruled by the master; to which ruling of the master complainant's counsel then and there duly excepted.

A. I was connected with its construction in the year 1849.

Q. How long did you remain connected with that road?

A. It was not until the latter part of 1849 that I commenced with the railroad company.

Q. How long did you continue in the service of the railroad company on the Hudson River road?

A. Until the spring of 1865.

Q. In what capacity were you associated with the Hudson River road at that time?

A. Different capacities. I have been as agent and——

Q. Station agent?

A. Station agent. I have been foreman of track. I have been trackmaster.

Q. What do you mean, foreman of track in charge of section?

A. Yes, sir; in charge of section; and then from that to trackmaster.

Q. What portion of the track were you trackmaster of?

A. From North Castleton down near Hudson, in Columbia county.

Q. How many miles had you charge of?

A. About sixteen miles.

Q. About sixteen?

A. Yes, sir.

703 Q. In what other capacity were you associated with the Hudson River road?

A. Construction conductor, taking charge of building a double track after that time. I was——

Q. How much double track did you build as construction master?

A. Six miles of that road between Hyde Park and Poughkeepsie.

Q. What is the next railroad that you were connected with?

A. Sussex railroad, of New Jersey.

Q. In what capacity were you connected with the Sussex railroad?

A. Superintendent.

Q. How long were you superintendent of the road?

A. From 1865 to the latter part of 1877.

Q. How long a road is the Sussex road, including its branches?

A. 34 to 38 miles, I should think; with branches included, nearly 40 miles—38 to 40.

Q. What other road have you been connected with since you were connected with the Sussex road?

A. No other road but the Green Bay & Minnesota.

Q. Then after you became connected with the Green Bay & Minnesota road your only experience as an operator of railroads
704 has been with the Sussex road, only 38 to 40 miles in length?

A. Principally.

Q. Were you in charge of any other railroad? You say "principally."

A. No, sir; no farther than I was an agent of the road—the Hudson River road.

Q. That is, station agent, you mean?

A. Yes, sir.

Q. In regard to the present facilities and the facilities at Seymour, you state that the necessity for passing trains is such that other ground is necessary than that ground which is now used by the road?

A. I do.

Q. What is the average length of your freight trains, Mr. Case—your loaded trains?

A. About, including engine and all——

Q. Give us the number of loads, please—the number of cars. Of course we understand that an engine must be attached to make it a train.

A. Between 800 and 900 feet.

Q. How long are your passenger trains, including engines?

A. Our passenger trains are about 160 feet long, I guess.

Q. Well, now, Mr. Case, giving a right of way 100 feet in
705 width with the main line of the road running through the center, leaving 50 feet on either side of the central line of the main track, is it or is it not possible to pass trains on such right of way safely without going outside beyond the 100 feet?

A. If you have plenty of room in length I do not say it is impossible; it is possible.

Q. A right of way 100 feet in width, 50 feet on either side from the central line of the main track, would give 40 feet in the clear, would it not—on either side, I mean, of the track?

A. Well, it would give 35 feet, I think; may be not quite 40; about 35 feet.

Q. When you say that gives 35 feet you mean clear of trains that may be on the track?

A. Clear of construction.

Q. Suppose there were 35 feet in the clear on either side of passing trains on the main track, would it not be feasible to include in that 35 feet another track on which other trains might be operated?

A. No; I think it would not. Take both sides of the road, I think it would be feasible.

Q. Well, then, I understand you, Mr. Case, to indicate that giving a right of way 100 feet wide, with a track in the center, there
706 would not be room enough on either side of that center track to pass trains?

A. No, sir.

Q. On side track or main track?

A. I say there would be room enough, but it is a question whether, if there is room enough for a second track, that would be room enough for a track outside of the centre of the 35 feet.

Q. Do you not know, as a fact, that the New York Central road or Hudson River road, one or both, has four tracks within a 100 feet width of right of way, on which four tracks trains pass freely and without accident?

A. Well, I don't know what the exact width of the Hudson River road is—not of the Hudson River—but on the New York Central there is. I know from my own experience, as well as with others; of course the room is inadequate, because they, running so close to one another, are jeopardizing the safety of their trains.

Q. The Hudson or New York Central Company have four tracks?

A. They do have it.

Q. Within 100 feet in width?

A. I do suppose they come within the limit.

Q. And do not passenger trains pass on those four different tracks at the rate of 40 miles and over?

707 Objected to by counsel for complainant and objection overruled by the master; to which ruling of the master complainant's counsel then and there duly excepted.

A. They have done so so far, I think.

Q. You stated in your direct testimony, Mr. Case, that more land is needed at Seymour because the passenger train cannot always pass the freight train at that point without being side-tracked?

A. That was so.

Q. You mean by that, I presume, that the present side track is not long enough to take in a freight train off the main track so the passenger train might pass on the main track when the freight train was side-tracked?

A. That, I mean.

Q. What obstacle is there to extending that side track east or west along the right of way at Seymour so that the side track may be made longer?

A. Well, I think there is a stream that comes in there that would have to be changed from its natural channel on the south side before continuing that side track—on the east side, I should say; this is south of the main line and east of the depot.

708 Q. Is there any obstacle to extending the side track west along the right of way?

A. Only that obstacle along the right of way; that would be in changing the stream; but I don't know as that is a positive obstacle, as it might be——

Q. That obstacle, if it is such, Mr. Case, applies only to the east end of the side track, does it?

A. I suppose that is all the east end of the side track.

Q. At the west end of the side track there is no stream?

A. There is no stream; no, sir; no, sir.

Q. Well, then, as a matter of fact, Mr. Case, at any station on your road where the right of way is 100 feet wide——

Mr. CASE: Your honor, I object to this cross-examination continuing——

The MASTER: Limit yourself to Seymour, Mr. Kelly.

Mr. KELLY: All right, sir. (To the witness): You speak in your direct examination of a possible large coal trade which will likely be done at stations along the road, and more particularly at Seymour. State why you anticipate a large coal trade at Seymour.

A. Wood is being exhumed, and we anticipate that in the
709 future, as it is a grain country in the neighborhood of Seymour.

Q. Do you know what anthracite coal, the kind of coal that has been referred to in your examination—do you know at what price anthracite coal could be furnished to consumers at Seymour?

Objected to by counsel for complainant and objection overruled by the master; to which ruling of the master complainant's counsel then and there duly excepted.

A. That depends altogether upon the year and the supply and demand. I could not give the exact price of that. I might give it this year, and I might give it last year, the year before, but——

Q. Well, give us this year's.

A. I do not see how I can give a correct answer.

Q. Give us this year's.

A. I believe this year, at the high price of coal, it would probably cost $7 or $7.50; may be $7.50; of course, according to the long haul.

Q. You say that coal could be delivered at the present price at Seymour—$7.50?

A. Yes, sir; $7.50.

Q. Do you know, Mr. Case, what the price of wood is this year?

A. I believe $2.00 to $2.50, or upwards, according to the quality of wood.

710 Q. You are buying wood, are you not, at Seymour?

A. I have my agent buy it.

Q. What are you paying for different kinds of wood at Seymour?

A. Now from $1.50 for pine wood, I believe, and hemlock $2.20.

Q. You get the very best of hard wood for $2.25 per cord?

Objected to by counsel for complainant, and objection overruled by the master; to which ruling of the master complainant's counsel then and there duly excepted.

Q. It is a fact, is it not, that there is a vast amount of wood in the vicinity of Seymour?

Objected to by counsel for complainant, and objection overruled by the master; to which ruling of the master complainant's counsel then and there duly excepted.

A. There is.

Q. It is a hard-timber country?

A. It is a hard-timber country, but I think the bulk near Seymour has been cut off. Of course, there is a considerable amount of wood at present that has been cut off and burned down.

Q. You speak in your direct examination about the possible necessity of a grain elevator at Seymour, and you stated that
711 you anticipated in the future a large grain shipment at that point?

A. I think I did.

Q. Can you state, Mr. Case, the amount of grain which has been received—the average which has been received—at that station since you have had anything to do with this railroad?

A. No, sir; I could not without reference to statistics or records.

Q. Can you state whether or not the grain business has increased on the average within the last five years?

A. At Seymour—yes, sir; it has increased so that we put buyers into that place where we hadn't before when I first came here.

Q. Is it not a fact, Mr. Case, that buyers were put in there a great many years ago?

A. I don't know.

Q. And you, when you got your opinion that the grain shipments had increased lately, Mr. Case, put buyers there to buy grain?

A. Since 1879—we put buyers in there in 1879, in 1880, and this year.

Q. But previous to your connection with this road you don't know of buyers being at Seymour?

A. No, sir.

712 Q. Has there been a delivery of coal at Seymour during the past year by your road?

A. I cannot say now.

Q. To your knowledge, has there been any demand for coal at Seymour?

A. I don't know positively about that.

Mr. KELLY: If the court please, a suggestion occurs to me right here. I understood that at a previous session the complainant's counsel declared that there was no question on their part as to the extent of the facilities at Black Creek.

The MASTER: There was one station.

Mr. KELLY: That station is Black Creek; I think it was admitted by the defendants that they were willing to admit that the amount of land designated at that point was necessary, and that they would make no offer to introduce any evidence to the contrary. I understood, also, that complainant's counsel stated that there was no con-

troversy as to the sufficiency of grounds devoted for depot purposes at Black Creek. I call the attention of the court to this matter because I notice in the direct examination of Mr. Case a question was asked about the sufficiency of grounds at Black Creek, and I remember to-day that the counsel on the other side rested without asking as to the depot grounds at Black Creek. Now, we
713 are willing that the matter should be left as we understood it, but if there is a question in regard to Black Creek, why, we may have some other testimony to offer in regard to the matter.

The MASTER: I am not positive Black Creek is the station. Is it Black Creek?

Mr. CASE: Black Creek.

The MASTER: I think we can drop that.

Redirect examination by Mr. CASE:

Q. You spoke about your being connected with the operating department of the Sussex railroad. About what facilities did you have there for doing your business, and were they sufficient?

A. They were very limited, from the fact that the road is built in primitive times.

Q. About how much land did you use at Newton, a station upon that road?

A. What amount?

Q. Yes.

A. We had at Newton, I think, between five and six acres there, besides the right of way.

Cross-examination continued by Mr. KELLY:

Q. Mr. Case, will you state—you have already testified in
714 your direct examination and cross-examination that you are purchasing wood at Seymour. For what purpose are you purchasing wood at that point?

A. For our locomotives.

Q. How much wood did you purchase at that point within the last twelve months?

A. I have no record of it; I have not given it a thought.

Q. Will you give me your judgment as to the amount?

A. I could not tell you anywheres near. I might be four or five hundred dollars out of the way, but it may be we purchased more at other points than we have there. I merely get the whole amount without noticing on any record—without giving the quantities at the different points—so I am not able to state definitely.

Q. As a matter of fact, it has been your custom to purchase quite an amount of wood at Seymour each year, has it not?

A. As a matter of fact, I think that is so. I don't know what quantity.

Q. Well, now, your having purchased wood at Seymour for several years, and large quantities at that, will you state why you purchased wood at that point?

715 A. We purchased it there because it was a hard-wood country, and better class of wood could be obtained there, and it was near our machine-shops.

Q. You purchased wood at Seymour because, all things considered, it was cheapest to purchase wood for your machine-shops?

A. No, sir; but because they were near the machine-shops at Fort Howard.

The MASTER: You have machine-shops at Seymour?

A. No, sir; at Fort Howard.

Mr. KELLY: You say you purchased wood at Seymour for your locomotives. Did you purchase wood for your locomotives because it was cheaper fuel than coal?

A. We purchased it because we had our engines—our engines were made principally for burning wood when I first came on the road, and we found it was the most convenient place for to get the wood to our round house at Fort Howard from Seymour. That was one reason why we purchased there, and also at Black Creek.

Q. You do not mean to say, Mr. Case, that you buy wood at Seymour and haul it to your round house at Fort Howard for the use of your locomotives, do you?

A. We do.

716 Q. Well, then, as a matter of fact, you purchase wood at Seymour, then go to the trouble and expense of hauling it to Fort Howard for the use of your locomotives, because it is the cheapest fuel you can get?

A. No, sir; not so. I wish to qualify that, because our experience in using coal has been such that, considering the relation of time and the expense of getting and hauling that wood and seasoning it for locomotives—when we take a record we find that our coal—we can buy coal, and one ton of coal will go as far as two cords of wood. When the expense of getting the wood and the time of filling the tender, for loss of motion and the detention of trains, is entered into my experience with this road, as well as with others, satisfies me that coal has come to be the cheaper fuel.

Q. Well, then, if coal is the cheaper fuel—or if in your judgment it is the cheaper fuel—it is because the cost of collecting wood, together with the cost of seasoning it, the cost of loading it in your tenders, etc., makes it more expensive than coal?

A. Sometimes in the year—in our flush times.

Redirect examination continued by Mr. CASE:

717 Q. You stated that your experience with reference to coal is that it is cheaper than wood. Did you have any motive to benefit the country or to encourage people to clean up their land which induced you to burn wood upon your freight trains? Is there anything of that kind?

A. It was a great motive—purchasing ties.

Mr. KELLY: I object to this. It is rather direct and leading. It is competent to ask witness what motive he had in buying wood, but not, "Is that the motive?"

Mr. CASE: Well, what was the motive? Please state the fact, if you were compelled, as a matter of fact, to buy wood because your engines were constructed so as to burn wood.

A. Yes, sir.

Q. Was there any other motive?

A. It was to encourage our patrons to cut their timber down and give them a chance to go into the agricultural business; and also where we were buying and purchasing ties from the same parties we felt as though we ought to purchase wood, and we catered to them.

(Whereupon defendants rested their case, and testimony closed for both parties.)

JAMES H. HOWE,
Special Master.

718 April 8, 1882.—This day came the defendant, George Hiles, by his solicitor, Mr. Powers, and filed exceptions to the report of the special master as follows:

Exceptions of Geo. Hiles.

United States Circuit Court, Eastern District of Wisconsin. In Equity.

TIMOTHY CASE, Receiver, &c.,

vs.

GEORGE HILES, Impleaded with DAVID M. KELLY, *et al.*

And now comes the said defendant, George Hiles, and excepts to the report of the Hon. James H. Howe, the special master to whom said cause was referred by order dated the 25th day of July, A. D. 1881, and which said report was filed in said court on the 20th day of March, A. D. 1882, as follows, to wit:

First exception. For that the said master found and reported that the depot grounds at Blair, Wisconsin, are insufficient in width, and that said complainant's road should have additional grounds at that station parallel for its whole length with the south line of said depot grounds and right of way and of the width of about 130 feet; whereas it appears, by the testimony and the record and papers on file in said cause, that the said depot grounds were, at the time of the construction of complainant's road at said Blair and at all
719 times since, sufficient in width, and that said road did not then and does not now require any additional grounds at that station; and, further, that it appears from the record and the testimony on file in said cause that said complainant's road is not entitled to take or have any of the lands belonging to said defendant included in the additional grounds mentioned in said report.

Second exception. For that the said master found and reported that the depot grounds at the station of Arcadia, on complainant's road, are insufficient to accommodate the business of said road at that station, and that said road needs an additional strip of land one

hundred and seventy-five feet in width and fifteen hundred feet in length upon the south side of its present depot grounds and parallel therewith; that between the eastern end of the present depot grounds and the eastern end of the additional tract above mentioned the width of the said additional tract should be 200 feet, so as to make the depot grounds at that station 1,500 feet in length and 300 feet in width, including the right of way; that the western end of such proposed tract should be at a point about opposite the western end of the present side track and extending thence
720 easterly the distance of 1,500 feet; that such proposed depot grounds can be taken wholly on the south side with equal advantage to the company and less inconvenience to and interference with the interests of third parties than if taken partly upon both sides; that the Mineral Springs Hotel is of the value of $4,500; that the value of the brick building on lot 7 is $2,500; that lumber sheds are of value of $250.

Whereas it appears by the evidence taken before said master and by the record and testimony on file in said cause that the above amount of additional depot grounds are not needed for the use of said road, and that the present depot grounds are and have always been sufficient to accommodate the business of said road at the said station of Arcadia, and that if any additional grounds are needed they should be taken on the north & not on the south side of the present depot grounds, and that the same could be so done with less inconvenience to and interference with the rights of third parties if so taken on the north side; that said Mineral Springs Hotel is of a greater value than $4,500; that said brick building on said lot 7 is of a greater value than $2,500; that said lumber sheds are of a greater value than $250; and, further, it appears from the said record & testimony that said complainant's road is not
721 entitled to take or have any of the land belonging to said defendant Hiles on the south side of its present depot grounds and right of way, as mentioned in said master's report.

And, further, it appears from said record and testimony on file that the lands of defendant Hiles which are mentioned in said master's report are a part of the tract of land purchased by said Hiles, as to which said receiver's counsel, in open court, upon the hearing of said cause, stated and declared the said complainant made no claim and asked no relief.

Wherefore said defendant doth except to said master's report as above specified, and asks the same to be modified and corrected, and doth also except to the said report in finding that complainant should have any lands of the defendant in this suit.

L. P. POWERS,
Solicitor of Def't Hiles.

GEO. H. NOYES, *Of Counsel.*

April 10, 1882.—This day came the complainant, by his solicitors, and filed exceptions to the report of the special master as follows:

Exceptions of Compl't.

United States Circuit Court, Eastern District of Wisconsin. In Equity.

TIMOTHY CASE, Receiver, *vs.* D. M. KELLY and Others.

722 Complainant excepts to the report of Hon James H. Howe, special master herein, filed on the twentieth day of March, 1882, to which special master the said case was referred by order of this court entered herein on the twenty-fifth day of July, A. D. 1881.

1st. For that the said master reports that the only land necessary for railroad uses at Merrillon station in addition to the land now being used at that station for railroad purposes is "a piece of land south of and parallel with the right of way of the main line of complainant's road two hundred feet in width extending from said east line to the eastern line of the right of way of the Omaha Company, and a "strip of land upon the north side of the main line of complainant's road of sufficient width to include the turn-table and extending of uniform width across said track from its eastern line to the eastern line of the right of way of the said Omaha Company:

Whereas the said master should have reported that said complainant was entitled to all of the land at said Merrillon station, as shown by the map of said station introduced in evidence before said master and now on file in this court.

2nd. For that the said master in determining the amount of land necessary for the use of said complainant's road at said Mer-
723 rillon station heard testimony offered by the defendants in the above-entitled cause:

Whereas the said master should not have allowed said defendants to introduce any testimony whatever as to the amount of land necessary for the said railroad company at the said station.

E. C. & W. C. LARNED,
Atty's for Timothy Case, Receiver, Complainant.

April 19, 1882.—This day came the defendant, D. M. Kelly, by his solicitor, Mr. Ellis, and filed exceptions to the report of the special master, as follows:

Exceptions of Defendant D. M. Kelly.

United States Circuit Court, Eastern District of Wisconsin.

TIMOTHY CASE, Receiver, Compl't, *v.* D. M. KELLY *et al.*, Def'ts.

And now comes the above-named defendant, D. M. Kelly, and takes the following exception to the report of J. H. Howe, special master, which was filed herein on the 20th day of March, 1882.

The said D. M. Kelly hereby excepts to said report because the same designates what lands were necessary for the use of the depot

grounds and other railroad purposes referred to in the order appointing said master at the date of said report and for the future
724 business of said railroad without ascertaining, designating, or limiting what lands were necessary for said purposes when the said railroad was first built or at any time before this suit was commenced. This exception is taken to said report so far as the same affects any of the lands of this defendant, and particularly such as said defendant owns at the station of Merrillon, Manawa, & Whitehall.

Wherefore the said defendant, D. M. Kelly, doth except to said report and he appeals therefrom to the judgment of this court, and prays that said master may be required to ascertain and report from the testimony already taken by him under said order.

1st. How much & what portions of said lands at the said stations of Merrillon, Manawa, and Whitehall were necessary for rights of way, depot grounds, and other purposes of said railroad when the said road was first built; and—

2d. How much thereof was necessary for said purposes between the date last referred to and the time of the commencement of this action, to wit, the 3d day of July, 1879.

E. H. ELLIS,
Sol'r for D. M. Kelly, Def't.

FINCHES, LYNDE & MILLER, *Of Counsel.*

725 October 2, 1882.—This day came the parties, by their counsel, and the several exceptions of the complainant and of the defendants, David M. Kelly and George Hiles, to the report of James H. Howe, special master, came on to be heard and were argued by Messrs. W. C. Larned and T. G. Case for the complainant and by Messrs. Lynde and Noyes for said defendants, and, the said hearing not being concluded, the same was adjourned until to-morrow morning.

October 3, 1882.—This day came the parties, by their counsel, and the hearing of the several exceptions of the complainant and of the defendants, David M. Kelly and George Hiles, to the report of James H. Howe, special master, was resumed, and, being concluded, the court took the same under consideration.

November 14, 1882.—This day came the parties, by their counsel, and on consideration of the several exceptions of the complainant and of the defendants, David M. Kelly and George Hiles, to the report of the special master, it is ordered by the court that all of said exceptions be, and hereby are, overruled, and that the said master's report be, and hereby is, confirmed; but the court finds that as a condition of the receiver taking the property at Arcadia, which the master finds is necessary for railroad purposes, the receiver should pay to the said defendant, George Hiles, the value of the im-
726 provements thereon as found by the master.

And now, at this same term, to wit, January term, 1883, and on the ninety-seventh day thereof, to wit, on the 21st day of May, A. D. 1883—present, the Hon. John M. Harlan, associate justice of the

Supreme Court of the United States, assigned to this circuit, presiding, and the Hon. Charles E. Dyer, district judge—the following proceedings were had, to wit:

Final Decree.

TIMOTHY CASE, Receiver of the Green Bay & Minnesota Railroad Co.,
vs.
DAVID M. KELLY, HENRY KETCHUM, GEORGE HILES, & THE ARCADIA MINERAL SPRING CO. } In Equity.

And now, on this twenty-first day of May, in the year eighteen hundred and eighty-three, comes the complainant, Timothy Case, receiver of the Green Bay and Minnesota Railroad Company, by E. C. & W. C. Larned and Theodore G. Case, his solicitors, and comes one of the defendants, David M. Kelly, by Norris and Ellis, his solicitors, and comes the defendant, Henry Ketchum, by George W. Cate, his solicitor, and comes the defendant, George Hiles, by L. P. Powers, his solicitor, and it appearing to the court that on the fifth day of January, in the year eighteen hundred and eighty,
727 default was taken against the defendant, The Arcadia Mineral Spring Company, and the bill of complaint in the above-entitled cause was taken as confessed against said defendant for failure to plead, answer, or demur thereto, and this cause coming on to be heard upon the bill of complaint herein and upon the answers of the defendants, Henry Ketchum, David M. Kelly, and George Hiles, and upon the replications of the complainant to each of said answers, and upon the default of the defendant, The Arcadia Mineral Spring Company, and upon the report of the special master, James H. Howe, appointed herein by order of this court on the twenty-fifth day of July, in the year eighteen hundred and eighty-one, which report was filed herein on the twentieth day of March, A. D. 1882, and upon the exceptions filed by the complainant and the defendants, David M. Kelly and George Hiles, to the said special master's report, and the court having heard arguments of counsel and being fully advised in the premises, and having overruled all of the said exceptions and ordered the master's report to be confirmed, and the same is hereby confirmed, it is hereby ordered, adjudged, and decreed that all of the exceptions filed to the report of the said special master be, and they are hereby, overruled, and the said report is hereby ratified, approved, and confirmed.

728 And it is further ordered, adjudged, and decreed that the complainant do recover, at the station of Black Creek, on said Green Bay and Minnesota railroad, of and from the defendant, David M. Kelly, the eight acres of land conveyed to said Kelly by one Burdick and others, by warranty deed, on the third day of January, A. D. 1872, which eight acres the said special master finds are now in the use of, and are necessary for the use of, said railroad company, and that the said defendant Kelly do forthwith make conveyance

thereof to the said railroad company, its successors or assigns. The said property is known and described as follows:

A piece of land in the southwest quarter of the southwest quarter of section nine (9), township twenty-three (23) north, range seventeen east, of the fourth principal meridian, and described as follows: Commencing at the northeast corner of block nine (9) of the recorded plat of the village of Middleburg, thence north two hundred and ninety-five (295) feet to the southeast corner of block five (5) of said plat; thence south sixty-seven degrees and forty minutes west along the south side of blocks five, four, three, and two to the centre of the county road; thence south one hundred and forty (140) feet; thence east along the north line of block six (6) to the northeast corner of said block; thence north sixty-seven degrees and forty
729 minutes east, along the north line of blocks seven, eight, and nine, to the place of beginning.

And it is further ordered, adjudged, and decreed that the defendant, David M. Kelly, do forthwith make conveyance to the said railroad company, its successors or assigns, of the following-described property and premises:

All of the land that is covered by the right of way of the Green Bay & Lake Pepin railway, being one hundred feet wide, and being fifty feet each side of the centre line of said railway where it is now located across the southeast quarter of the northeast quarter of section twenty-one (21), in town. twenty-three (23), range thirteen (13) east, and all the land that is south of the said railway line on the southeast quarter of the northeast quarter of section twenty-one, town. and range aforesaid, in the county of Waupaca, in the State of Wisconsin.

And it is further ordered, adjudged, and decreed that the defendant, David M. Kelly, do forthwith make conveyance to the said railroad company, its successor or assigns, of the following-described property and premises:

All that tract or parcel of land situate, lying, and being in the county of Jackson and State of Wisconsin, and particularly
730 described as follows, to wit: The north half of the northwest quarter of the southeast quarter (N. ½ of N. W. ¼ of S. E. ¼) of section nineteen (19), town. twenty-two (22), range five (5), and all that part of the southwest quarter of the northeast quarter (S. W. ¼ of N. *W.* ¼) of section nineteen (19), town. twenty-two (22), range five (5), which lies south of the railroad track of the Green Bay and Minnesota Railroad Company.

And it is further ordered, adjudged, and decreed that the defendant, David M. Kelly, do forthwith make conveyance to the said railroad company, its successor or assigns, of all his interest in the following-described premises situated in the town of Manawa, county of Waupaca, in the State of Wisconsin: Commencing at a point one hundred and fifty-six (156) feet north of the point where the centre line of the main track of the Green Bay, Winona & St. Paul railroad track crosses the center line north and south of section twenty-one (21), township twenty-three (23) north, range thirteen (13) east, of the fourth principal meridian, thence in a southeasterly direction

parallel with and one hundred and fifty (150) feet distant from the center of said main track for a distance of fifteen hundred (1,500) feet; thence south one hundred and four (104) feet; thence in a south-easterly direction parallel with and fifty feet distant at right
731 angles northwardly from the centre of said railroad track to the east line of the southeast quarter of the northeast quarter of the said section twenty-one (21); thence southwardly to the south-east corner of the said southeast quarter of the northeast quarter of section twenty-one (21); thence west, following the south line of the said southeast quarter of the northeast quarter of section twenty-one (21) to the southwest corner of same; thence north, following the west line of the said southeast quarter of the northeast quarter of section twenty-one (21) to a point one hundred and fifty-six (156) feet south of the said center of railroad track; thence in a north-westerly direction parallel to and one hundred and fifty (150) feet southwardly at right angles from the center of said railroad track to the west line of the southwest quarter of the northeast quarter of said section twenty-one (21); thence following the said west line in a north direction for a distance of three hundred and twelve (312) feet to the place of beginning.

And it is further ordered, adjudged, and decreed that the defendant, David M. Kelly, do forthwith make conveyance to the said railroad company, its successors or assigns, — all his interest in the following-described property and premises situated in town of Seymour, county of Outagamie, in the State of Wisconsin, to wit: Com-
732 mencing at a point one hundred and eleven and eight-tenths ($111\frac{8}{10}$) feet north of the southeast corner of the northwest quarter of the northwest quarter of section thirty-three (33), town. twenty-four (24) north, range eighteen (18) east, thence north four hundred and three and two-tenths ($403\frac{2}{10}$) feet; thence westerly, parallel with the center line of the main track of the Green Bay, Winona and St. Paul railroad, for a distance of nine hundred and fifty-four and five-tenths ($954\frac{5}{10}$) feet; thence south two hundred and twenty-eight and two-tenths ($228\frac{2}{10}$) feet to a point fifty feet north of the center line of said railroad track; thence westerly and parallel to said centre line of said railroad track to the west line of said section thirty-three (33); thence south one hundred and seventy-five (175) feet; thence easterly parallel to the said center line of said railroad track to the place of beginning.

And it is further ordered, adjudged, and decreed that the defendant, David M. Kelly, do forthwith make conveyance to the said railroad company, its successor or assigns, of all his interest in the following-described property and premises situated at Merrillon Junction, in the county of Jackson and State of Wisconsin, and described as follows, to wit: All that part of the southeast
733 quarter of the southeast quarter (S. E. $\frac{1}{4}$ of S. E. $\frac{1}{4}$) of section twenty-two (22) and the southwest quarter of the southwest quarter (S. W. $\frac{1}{4}$ of S. W. $\frac{1}{4}$) of section twenty-three (23), in township twenty-three (23) north, range four (4) west, of the fourth principal meridian, bounded and described as follows: Commencing at a point on the west boundary line of the right of way of the Chicago, St.

Paul, Minneapolis and Omaha railroad, being fifty (50) feet at right angles from the center of main track of said railroad and one hundred and fifty (150) feet in a northerly direction at right angles from the center of the Green Bay, Winona and St. Paul railroad track as now laid and operated, thence south eighty-four degrees and forty-two minutes west, by a line parallel with and distant one hundred fifty (150) feet at right angles to the center line of said Green Bay, Winona and St. Paul railroad track, a distance of two hundred and sixty (260) feet; thence south fifty (50) feet; thence south eighty-four degrees and forty-two minutes west, by a line parallel and distant aforesaid one hundred (100) feet from the last-aforesaid center line, a distance of two hundred and ten (210) feet; thence south, by a line crossing the center line last aforesaid at a point distant six hundred (600) feet from the center of the crossing of the
734 main tracks of the railroad and *railroad* aforesaid, a distance of two hundred (200) feet; thence north eighty-four degrees and forty-two minutes east, parallel with and distant from the last aforesaid center line one hundred (100) feet, for a distance of three hundred and ten (310) feet, to a point distant fifty (50) feet at right angles in a southerly direction from the center line of the side track known as the "Y," connecting the two railroads aforesaid; thence by a curved line to the right, parallel with and distant from the center line of said "Y" as aforesaid, a curved distance of six hundred and fifteen feet, to a point in the western boundary line of said right of way of said Chicago, St. Paul, Minneapolis & Omaha railroad near the intersection of the east line of Main street, produced; thence north twenty-nine degrees and eighteen minutes west, along said western boundary line of the right of way of said Chicago, St. Paul, Minneapolis and Omaha railroad, a distance of seven hundred and eighty (780) feet to the place of beginning; also a strip of land three hundred and thirty (330) feet wide, being eighty feet on the north and two hundred and fifty (250) feet on the south from the center line of main track of the Green Bay, Winona & St. Paul railroad, and extending over the
735 east line of the right of way of the Chicago, St. Paul, Minneapolis & Omaha railroad (said east line being fifty (50) feet from center line of said road) to the east line of the southwest quarter of the southwest quarter (S. W. ¼ of S. W. ¼) of section twenty-three (23), township twenty-three (23) north, range four (4) west, of the fourth principal meridian, the said strip being in the said southwest quarter of the southwest quarter of said section twenty-three (23).

And it is further ordered, adjudged, and decreed that the defendant, David M. Kelly, do forthwith make conveyance to the said railroad company, its successor or assigns, of all his interest in the following-described property and premises situated in the town of Whitehall, in the county of Trempealeau, in the State of Wisconsin, and described as follows, to wit: Commencing at a point eight hundred and fifty-eight (858) feet northwest from the center line north and south of section twenty-three (23), township twenty-two (22) north, range eight (8) west, of the fourth principal meridian, measured par-

allel, and one hundred and eighty (180) feet south at right angles from the center of the Green Bay, Winona & St. Paul railroad track; thence north fifteen degrees and fifty minutes east for a distance of two hundred and thirty (230) feet; thence in an easterly direction by a reversed curved line to the left and right following the curves of the center line of the side track of the said railroad, as now operated, parallel with and distant fifty (50) feet at right angles therefrom a curved distance of five hundred and fifteen (515) feet to a point distant one hundred and nineteen (119) feet at right angles from center line of the main track aforesaid; thence by a right line south seventy-four degrees and ten minutes east parallel with and distant from the center line of said side track as aforesaid a distance of four hundred and eighty-three (483) feet; thence by a reverse curved line to the right and left, following the course of the center line of said side track and parallel with and distant fifty (50) feet at right angles therefrom, a curved distance of 516 feet to a point distant 50 ft. at right angles from said center line of main track; thence south seventy-four degrees and ten minutes west a distance of 230 feet; thence north 74° 10′ west, a distance of fifteen hundred (1,500) feet, to the place of beginning. 736

Also a strip of land one hundred (100) feet wide, being fifty (50) feet on each side of the centre of the main track of the Green Bay, Winona & St. Paul railroad as the same passes over the northeast quarter of the southwest quarter (N. E. ¼ of S. W. ¼); also the northwest quarter of the southeast quarter (N. W. ¼ of S. E. ¼) and the southwest quarter of the southeast quarter (S. W. ¼ of S. E. ¼), all being in section twenty-three (23), township twenty-two (22) north, range eight (8) west, of the fourth principal meridian. 737

Also a strip of land one hundred (100) feet wide, being fifty (50) feet on each side of the center of the said Green Bay, Winona & St. Paul railroad track as the same passes through the southeast quarter of the southeast quarter (S. E. ¼ of S. E. ¼) of section twenty-three, the southwest quarter of the southwest quarter (S. W. ¼ of S. W. ¼) of section twenty-four (24); also the northwest quarter of the northwest quarter (N. W. ¼ of N. W. ¼) of section twenty-five (25), all in township twenty-two (22) north, range eight (8) west, of the fourth principal meridian.

And it is further ordered, adjudged, and decreed that the defendants, David M. Kelly, Henry Ketchum, George Hiles, and The Arcadia Mineral Spring Company, do forthwith convey to the said railroad company, its successor or assigns, all the interest which they, the said defendants, hold, either jointly or severally, in the following-described property and premises, situated in the town of Preston, near the village of Blair, in the county of Trempealeau and State of Wisconsin, known and described as follows, to wit: 738

Commencing at a point one hundred and nineteen and four-tenths ($119\frac{4}{10}$) feet north of the point where the center line of the main track of the Green Bay, Winona & St. Paul railroad track crosses the east line of the northwest quarter of the southeast quarter (N. W. ¼ of S. E. ¼) of section sixteen (16), township twenty-one (21) north, range seven (7) west, of the fourth principal meridian, thence

northwesterly, on a curve and parallel with said center line of track and one hundred and nineteen (119) feet distant from same, for a distance of six hundred and ninety-three (693) feet; thence in a southwesterly direction, at right angles with said railroad track, for a distance of two hundred and ninety-nine (299) feet; thence in a southeasterly direction, on a curve parallel with the said center line of railroad track and one hundred and eighty feet distant from the same, for a distance of fourteen hundred and thirty-eight and eighty-four hundredths (1,438.84) feet; thence in a northwesterly direction, at right angles with said railroad track, for a distance of two hundred and ninety-nine (299) feet; thence in a westerly direction, on a curve parallel with the center line of said railroad track and one hundred and nineteen (119) feet distant from same, for a distance of five hundred and forty (540) feet, to the place of beginning;
739 also a strip of land one hundred (100) feet wide, being fifty (50) feet on each side of the center line of the Green Bay, Winona & St. Paul railroad as the same passes through the northwest quarter of the southeast quarter (N. W. ¼ of S. E. ¼); also the northeast quarter of the southeast quarter (N. E. ¼ of S. E. ¼) of section sixteen, township twenty-one (21) north, range seven (7) west, of the fourth principal meridian.

And it is further ordered, adjudged, and decreed that the defendants, George Hiles, Henry Ketchum, and the Arcadia Mineral Spring Company, do forthwith convey to the Green Bay, Winona and St. Paul Railroad Company, its successor or assigns, all the interest which they, the said defendants, hold, either jointly or severally, in the following-described property and premises situated in the town of Arcadia, county of Trempealeau, in the State of Wisconsin, and known and described as follows:

Commencing at a point as a place of beginning fifty (50) feet in a northwesterly direction, at right angles with the center of the main track of the Green Bay, Winona & St. Paul Railroad, and seven hundred and twenty-seven (727) feet; measured along said center line of track in a northwesterly direction over the south line
740 of the northeast quarter of the southwest quarter of section thirty-two (32), township twenty-one (21) north, range nine west, of the fourth principal meridian, thence in a northeasterly direction parallel with the center of said track fifteen hundred (1,500) feet; thence at right angles in a southeasterly direction three hundred (300) feet; thence at right angles in a southwesterly direction parallel with the said center line of track for a distance of fifteen hundred (1,500) feet; thence at right angles in a northwesterly direction for a distance of 200 ft. to the place of beginning.

Also a strip of land one hundred (100) feet wide, being fifty (50) feet on each side of the center line of the main track of the Green Bay, Winona & St. Paul railroad as the same passes over the southeast quarter of the northwest quarter; also the west half of the northeast quarter; also the west half of the northeast quarter of the southwest quarter; also the northwest quarter of the southwest quarter, all in section thirty-two (32), township twenty-one (21) north, range nine (9) west, of the fourth principal meridian, except as included

in the depot grounds as above described, excepting, however, from the land above described to be conveyed so much thereof as is covered by a certain building known as the Arcadia Mineral
741 Springs Hotel; also a brick building and the lumber sheds owned by said defendant Hiles and used in connection with a certain lumber yard as described in the said master's report herein, which hotel building is estimated by said master to be worth forty-five hundred dollars ($4,500), and which brick building is estimated to be worth twenty-five hundred dollars ($2,500), and which lumber sheds are estimated by said master to be worth two hundred and and fifty dollars ($250).

And it is further hereby ordered, adjudged, and decreed that the said lands so covered by said hotel and said brick building and said lumber sheds shall be conveyed by the said defendants to the said railroad company, its successors and assigns, upon the payment by the said railroad company, its successors and assigns, to the owner or owners of said buildings of the sums which the same are respectively found by said master to be worth in case the complainant shall elect to take and pay for said improvements; and in case the said complainant shall elect not to take and pay for the said improvements the said defendants shall be allowed all necessary ingress and egress to and from said improvements over the property of the said railroad company in the vicinity of said improvements, said
742 election on the part of said complainant to be reduced to writing and served upon George H. Noyes, attorney for defendant, George Hiles, within ten days from the date of the entry of this decree, and to be thereafter filed herein and made a part of the record in this case; all of the said lands and premises hereinabove ordered to be conveyed having been adjudged by the said master heretofore appointed by this court to make report thereon to be necessary for the uses and purposes of the said railroad company.

And it is further ordered, adjudged, and decreed that the order of injunction heretofore made in this case restraining said defendants or either of them from selling or conveying any part of the premises described in the said bill of complaint until the further order of this court shall remain in full force and effect until the final determination of this cause: Provided, That the said complainant shall give bond, with surety, to be approved by the clerk of this court, in the sum of five thousand dollars each to protect, indemnify, and save harmless the said defendants and each of them; said bonds to be given separately to each of the defendants herein from any and all damages which may be suffered by them or either of them by
743 reason of them or either of them being prevented from selling or disposing of or conveying or encumbering any of the said property described in the said bill of complaint herein and found by the previous order of this court heretofore made and entered herein to have been acquired by said defendants as trustees for said railroad company and not included in any of the pieces or parcels of land hereinbefore ordered to be conveyed forthwith by the said defendants or either of them to the said railroad company, its successor or assigns.

It is further ordered, adjudged, and decreed that the said defendants and each of them shall make, execute, and deliver the said conveyances of the said lands and premises so as aforesaid hereinabove directed to be conveyed by them and each of them within forty days from the date of the entry of this decree, and in default thereof, or in case the said defendants or either of them shall refuse to make such conveyances, then Edward Kurtz, clerk of this court, shall, and he is hereby ordered to, make, execute, and deliver, in the name of said defendants or each or either of them, conveyances of the said lands and premises hereinabove directed to be conveyed, and the said conveyance or conveyances so made by the said clerk shall be as valid and effectual to convey all the interest of the
744 said defendants in the said lands and premises as if they, the said defendants or either of them, had themselves made, executed, and delivered said conveyances as hereinabove directed.

One-half of the costs and disbursements of this proceeding, to be taxed, shall be paid by the defendants and one-half by the complainant; and the master's fees herein are fixed at $450, and are to be taxed as part of the costs, exclusive of his disbursements, amounting to $136.75; and said master's fees and disbursements are hereby ordered to be paid immediately, one-half by the defendants and one-half by the complainant.

(Signed) CHAS. E. DYER, *Judge.*

July 6, 1883.—This day came the defendants, by their counsel, Messrs. Noyes and Finch, and made application for an increase of the amount of the bond provided by the decree to be given to the defendants by reason of the injunction remaining in force until the final determination of this cause. Whereupon it is ordered by the court that the defendants be allowed fifteen days in which to serve and file affidavits in support of said application and the complainant fifteen days thereafter to serve and file affidavits in reply.

July 21, 1883.—Affidavits of the defendants, George Hiles and Henry Ketchum, under their application of July 6, 1883, filed.

745 July 23, 1883.—This day came the defendant, David M. Kelly, by his counsel, Mr. Finch, and, on his motion and affidavit herein filed, it is ordered by the court that he be, and hereby is, allowed fifteen days from the 21st inst. in which to serve and file affidavits in support of his application for an increase of bond to be given by complainant by reason of the injunction remaining in force until the final determination of this cause.

October 8, 1883.—This day the application of the defendants for an increase of the amount of the bond provided by the decree to be given by the complainant as a condition of the injunction remaining in force until the final determination of this cause came on to be heard upon affidavits filed on behalf of both the complainant and the respective defendants, and was argued by Messrs. E. H. Ellis and Geo. H. Noyes on behalf of the defendants and by Messrs. W. C. Larned and T. G. Case for the complainant, and, being submitted, the court took the same under consideration.

October 22, 1883.—This day came the parties, by their counsel,

and, on consideration of the motion of the defendants for an increase of the amount of bond provided by the decree in this cause to be given by the complainant as a condition for continuance of
746 the injunction mentioned in said decree pending an appeal to the Supreme Court, it is ordered by the court that said motion be granted to the following extent, to wit: That such bond be given to the defendant, David M. Kelly, in the sum of $18,000; to the defendant, George Hiles, in the sum of $8,500, and to the defendant, Henry Ketchum, in the sum of $5,500.

And it is ordered and decreed that the decree entered in this cause on the 21st day of May, A. D. 1883, wherein the amount of such bonds is fixed at $5,000 to each defendant, be, and hereby is, modified in accordance with the above order.

March 7, 1884.—Bonds of the complainant, with John I. Blair as surety, executed pursuant to the decree, as modified by the order made herein on the 22nd day of October, 1883, to the defendant, David M. Kelly, in the sum of $18,000; to the defendant, George Hiles, in the sum of $8,500, and to the defendant, Henry Ketchum, in the sum of $5,000; approved by the clerk; filed.

Appeal.

July 11, 1884.—This day came the complainant, by his solicitors, and prayed an appeal to the Supreme Court of the United States and filed his bond, with John I. Blair, of Blairstown, N. J., as surety, in the sum of one thousand dollars, conditioned to prosecute his said appeal to effect and answer all costs if he shall fail to
747 make good his plea; which bond is approved by the district judge and is as follows:

Appeal Bond.

In the Circuit Court of the United States for the Eastern District of Wisconsin.

TIMOTHY CASE, Receiver of the Green Bay and Minnesota Railroad Co.

vs.

DAVID M. KELLY, GEORGE HILES, HENRY KETCHUM, & THE ARCADIA MINERAL SPRING COMPANY.

Know all men by these presents that we, Timothy Case, as receiver of the Green Bay and Minnesota Railroad Company, as principal, and John I. Blair, of Blairstown, New Jersey, as surety, are held and firmly bound unto David M. Kelly, George Hiles, Henry Ketchum, and the Arcadia Mineral Spring Company, all of the State of Wisconsin, in the sum of one thousand dollars, to be paid to the said David M. Kelly, George Hiles, Henry Ketchum, and the Arcadia Mineral Spring Company, their executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and all and each of our heirs, executors, administrators, *executors*, or assigns, firmly by these presents.

Sealed with our seals; dated this eighth day of July, A. D. 1884.

748 Whereas the above-named Timothy Case, receiver of the Green Bay and Minnesota Railroad Company, has taken an appeal to the Supreme Court of the United States to reverse a decree rendered in the above-entitled action by the circuit court of the United States for the eastern district of Wisconsin:

Now, therefore, the condition of this obligation is such that if the above-named Timothy Case, receiver of the Green Bay and Minnesota Railroad Company, shall prosecute his said appeal to effect and answer all costs if he shall fail to make good his plea, then this obligation to be void; otherwise to remain in full force and virtue.

JOHN I. BLAIR, [SEAL.]
Of Blairstown, N. J.
TIMOTHY CASE, [SEAL.]
As Receiver of the Green Bay and Minnesota Railroad Company.

Endorsed: I approve the within and foregoing bond. July 11, 1884. Chas. E. Dyer, judge.

Whereupon it is ordered that said appeal be, and hereby is, allowed and a citation issued.

749 UNITED STATES OF AMERICA, } *ss:*
Eastern District of Wisconsin, }

I, Edward Kurtz, clerk of the circuit court of the United States of America for the eastern district of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate with their originals now on file and remaining of record in my office, and that they are true copies of such originals and correct transcripts therefrom, being a transcript of the record and proceedings in the case of Timothy Case, receiver, &c., *vs.* D. M. Kelly *et al.* (with seven maps on tracing paper accompanying same).

In testimony whereof I have hereunto set my hand and duly affixed the seal of the said court, at the city of Milwaukee, in said district, this 24th day of September, in the year of our Lord one thousand eight hundred and eighty-four, and of the Independence of the United States the 109th.

[Seal U. S. Circuit Court, Eastern District Wisconsin.]

EDWARD KURTZ, *Clerk.*

750 UNITED STATES OF AMERICA, *ss:*

[SEAL.] To David M. Kelly, Henry Ketchum, George Hiles, and the Arcadia Mineral Spring Company, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to an appeal in the circuit court of the United States for the eastern district of Wisconsin, wherein Timothy Case, receiver of the Green Bay and Minnesota

Railroad Company is appellant and you are appellees, to show cause, if any there be, why the decree passed against the said Timothy Case, receiver of the Green Bay and Minnesota Railroad Company, should not be reversed and speedy justice done to the parties in that behalf.

Witness the Honorable Charles E. Dyer, district judge of the United States for the eastern district of Wisconsin, at the city of Milwaukee, this 11th day of July, A. D. 1884, and of the Independence of the United States the 109th.

CHAS. E. DYER, *Judge.*

We accept service of above citation this 4th day of September, A. D. 1884.

E. H. ELLIS,
Solicitor for the Def't, D. M. Kelly.
G. W. CATE,
Sol'r for Def't, Henry Ketchum.
L. P. POWERS,
Solicitor for Geo. Hiles and
The Arcadia Mineral Spring Co., Def'ts.

[Endorsed in pencil:] Original. Sign acceptance of service inside under Judge Ellis' signature or over the page if you prefer.

Endorsed on cover: E. Wisconsin C. C. U. S. No. 147. Timothy Case, receiver of the Green Bay & Minnesota Railroad Company, appellant, *vs.* David M. Kelly, Henry Ketchum, George Hiles, and The Arcadia Mineral Spring Company. Filed 21st October, 1884.

In the Supreme Court of the United States. October Term, 1889.

TIMOTHY CASE, Receiver, &c., Appellant,
vs.
DAVID M. KELLY *et al.*
No. 2.

And now comes the said appellant and shows unto the Court as follows, to wit: That on January 26, 1888, the death of Henry Ketchum, one of the appellees herein, was suggested; that on the same day the cause was argued and submitted to the Court; that on July 19, 1888, the appearance of the heirs and legal representatives of said Ketchum was filed in the cause; on October 9, 1888, a motion was submitted asking for an order making the heirs and legal representatives of said Ketchum parties to the cause; on Oct. 15th an order was made herein requiring the filing of certain affidavits to the effect that said persons named in the papers were the sole heirs and legal representatives of said Ketchum, and providing that in default thereof that publication be made pursuant to the first section of rule 15 of this Court; that no affidavits having been filed pursuant to said order, on December 19, 1888, an order of publication was issued; that on July 6th, 1889, said order was duly published, and proof of publication thereof was filed in the clerk's office of this Court September 12, 1889; and said parties having failed to come in within the first ten days of this term, pursuant to the requirement of said rule, it is therefore, the premises considered, by the appellant now moved that such order or direction may be passed by the Court as to it may seem proper or the exigency of the case may require.

W. C. LARNED,
By WM. A. McKENNEY,
Of Counsel for Appellant.

Endorsed: Filed Oct. 28, 1889.

Supreme Court of the United States. October Term, 1887.

TIMOTHY CASE, Receiver of the Green Bay and Minnesota R. R. Co.,
vs.
D. M. KELLY, HENRY KETCHUM, GEORGE HILES, and THE ARCADIA MINERAL SPRING COMPANY.
No. 147.

JAN'Y 26TH, 1888.

And now comes Walter C. Larned, of counsel for the appellant, and suggests the death of Henry Ketchum, one of the appellees in this cause, who died in the month of March, A. D. 1887.

WALTER C. LARNED,
Counsel for Appellant.

Endorsed: Filed Jan. 26, 1888.

Supreme Court of the United States. October Term, A. D. 1888.
In Chancery.

TIMOTHY CASE, Receiver, &c., Appellant,
vs.
DAVID M. KELLY, HENRY KETCHUM, *et al.* } No. 12.

Motion.

OCTOBER 9TH, 1888.

And now comes Walter C. Larned, solicitor for the appellant, and presents to the Court the written appearances of the heirs and representatives of Henry Ketchum, deceased, and moves the Court that they be made parties defendant herein, and that an order be entered requiring them to file a brief herein within thirty days; in default whereof they will be held bound by the decision of the Court to be rendered herein.

WALTER C. LARNED,
Solicitor for Appellant.

Endorsed: Office Supreme Court U. S. Filed Oct. 8, 1888. James H. McKenney, clerk.

Appearance.

In the Supreme Court of the United States. October Term, A. D. 1887.

TIMOTHY CASE, Receiver Green Bay, Winona and St. Paul R. R., Appellant,
vs.
D. M. KELLEY, HENRY KETCHUM, GEORGE HILES, and ARCADIAN MINERAL SPRING CO., Appellees. } No. 147.

Appeal from the circuit court of the United States for the eastern district of Wisconsin. In chancery.

The death of Henry Ketchum having been suggested in the above-entitled cause, we, his heirs and representatives, do hereby enter our appearances in said cause and agree to abide the decision of the Court therein, excepting and reserving the right to make further argument and file a brief in our behalf if, upon investigation, we find that our rights therein have not been properly presented to the Court.

(Signed) RUSSELL G. FLOYD.
LAURA E. FLOYD.
C. H. KETCHUM.
JENNIE KETCHUM.

Endorsed: Office Supreme Court U. S. Filed Jul- 19, 1888. James H. McKenney, clerk.

Appearance.

In the Supreme Court of the United States. October Term, A. D. 1887.

TIMOTHY CASE, Receiver Green Bay, Winona & St. Paul R. R., Appellant,
vs.
D. M. KELLEY, HENRY KETCHUM, GEORGE HILES, and ARCADIAN MINERAL SPRING CO., Appellees. } No. 147.

Appeal from the circuit court of the United States for the eastern district of Wisconsin. In chancery.

The death of Henry Ketchum having been suggested in the above-entitled cause, we, his heirs and representatives, do hereby enter our appearances in said cause and agree to abide the decision of the Court therein, excepting and reserving the right to make further argument and file a brief in our behalf if, upon investigation, we find that our rights therein have not been properly presented to the Court.

(Signed) THEODORE H. EARLE.
MARANDO L. EARLE.
ELLA C. KETCHUM.
TRUMAN A. KETCHUM.
HARRIET N. RICH.
CHAS. RICH.

Endorsed: Office Supreme Court U. S. Filed Jul- 19, 1888. James H. McKenney, clerk.

Supreme Court of the United States. October Term, 1888.

TIMOTHY CASE, Receiver, &c., Appellant,
vs.
DAVID M. KELLY *et al.* } 12.

On consideration of the motion of Mr. W. C. Larned, of counsel for the appellant, to make certain heirs and representatives of Henry Ketchum, deceased, appellees in this cause, it is ordered that upon the filing of an affidavit or affidavits that the persons named in the papers on file are the sole heirs and representatives of the said Henry Ketchum, deceased, an order will be entered making them parties, and that they be, and are hereby, granted ninety days from the filing of such affidavit or affidavits within which to file briefs; but in the event of such affidavit not being filed within ninety days from the date of this order, an order of publication under the first section of rule 15 will be issued upon application of counsel for the appellant to the clerk without the further order of this Court.

October 15, 1888.

and was argued at the last term, but the Court held that the appearances were not formal, and requested me to get their appearances, which would answer the requirements of the rules of the Court. I have accordingly in my hand the individual appearances of the heirs of Ketchum, which have been filed here, and I ask of the Court an order that they shall be made parties defendant to this suit. These appearances are hereunto subjoined.

Mr. Justice MILLER: Won't you read what you have got?

Mr. LARNED: Yes, sir (reading).

I desire a further order, after the parties shall be made, that they shall file briefs, if they desire to do so, say within thirty days.

It has been almost impossible to bring these heirs in by ordinary proceeding, some of them living in remote places, as far as Montana, but they desire to come in, and here are their own individual appearances signed by each one of them.

The purpose of this motion is not antagonistic to the rights of the heirs of the deceased defendant, Henry Ketchum, for they desire to be brought into this case and have it finally decided. They have shown this desire by filing the aforesaid written appearances, which were obtained from them by their attorney in Wisconsin. The names of the heirs and representatives of the defendant, Ketchum, to be affected by this order are subjoined, and are as follows:

Laura E. Floyd.
Russell G. Floyd.
C. H. Ketchum.
Jennie Ketchum.
Theodore H. Earle.
Maranda L. Earle.
Ella C. Ketchum.
Truman A. Ketchum.
Harriet N. Rich.
Charles Rich.

APPEARANCE.

In the Supreme Court of the United States. October Term, A. D. 1887. No. 147.

TIMOTHY CASE, Receiver Green Bay, Winona and St. Paul R. R., Appellant,

vs.

D. M. KELLEY, HENRY KETCHUM, GEORGE HILES, and ARCADIAN MINERAL SPRING CO., Appellees.

Appeal from the Circuit Court of the United States for the Eastern District of Wisconsin. In Chancery.

The death of Henry Ketchum having been suggested in the above-entitled cause, we, his heirs and representatives do hereby enter our appearances in said cause and agree to abide the decision of the Court therein, excepting and reserving the right to make further argument and file a brief in our behalf if upon investigation we find that our rights therein have not been properly presented to the Court.

(Signed) RUSSELL G. FLOYD.
LAURA E. FLOYD.
C. H. KETCHUM.
JENNIE KETCHUM.

APPEARANCE.

In the Supreme Court of the United States. October Term, A. D. 1887. No. 147.

TIMOTHY CASE, Receiver Green Bay, Winona & St. Paul R. R., Appellant,

vs.

D. M. KELLEY, HENRY KETCHUM, GEORGE HILES, and ARCADIAN MINERAL SPRING CO., Appellees.

Appeal from the Circuit Court of the United States for the Eastern District of Wisconsin. In Chancery.

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(Signed) THEODORE H. EARLE.
MARANDO L. EARLE.
ELLA C. KETCHUM.
TRUMAN A. KETCHUM.
HARRIET N. RICH.
CHAS. RICH.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D 1887.

No. 147.

TIMOTHY CASE, RECEIVER OF THE GREEN BAY AND MINNESOTA RAILROAD COMPANY,

Appellant,

vs.

DAVID M. KELLY, HENRY KETCHUM, GEORGE HILES AND THE ARCADIA MINERAL SPRING COMPANY,

Appellees.

Appeal from the Circuit Court of the United States for the Eastern District of Wisconsin.

Brief for Appellant.

WALTER C. LARNED,
Solicitor for Appellant.

CHICAGO:
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1887.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1887.

No. 147.

TIMOTHY CASE, RECEIVER OF THE GREEN BAY AND MINNESOTA RAILROAD COMPANY,
Appellant,
vs.
DAVID M. KELLY, HENRY KETCHUM, GEORGE HILES AND THE ARCADIA MINERAL SPRING COMPANY,
Appellees.

Appeal from the Circuit Court of the United States, for the Eastern District of Wisconsin.

BRIEF FOR APPELLANT.

STATEMENT OF THE CASE.

1. On the third day of July, in the year 1879, Timothy Case, receiver of the Green Bay and Minnesota Railroad Company, filed a bill in the Circuit Court of the United States for the Eastern District of Wisconsin, against D. M. Kelly, H. Ketchum, G. Hiles and the Arcadia Mineral Spring Company, for the purpose of enforcing the conveyance to the railroad company of certain lands along its line, the title to which stood in the name of one or other or two or three jointly, of these defendants.

The bill gives a description of the land in question, and

also asks for the conveyance to the company of all other lands the title to which should be in the same condition, and which the testimony might disclose.

Stated in its simplest form the substance of the bill is this: Three of the defendants were either officers of the railroad or directly connected with its affairs. And it is charged that when the conveyances described were made to these men in their individual names, the grantors conveying such lands intended to convey them to the railroad company, and supposed that they were so conveying them. It is therefore alleged in the bill that while the conveyances are nominally to one or the other or to two or three of these defendants, they are actually, in equity, conveyances to the company itself, because such was the intention of the grantors.

There are also certain conveyances of land mentioned in the bill where a money consideration was given in part, at least, by one or the other of these defendants, but where the main part of the consideration is charged to be the location of the railroad upon or near the lands in question, or the building of a depot at such a point as to benefit some other lands still held by the grantor of the lands described. In these cases, and in those where no money consideration was given, still more strongly it is charged that the actual consideration for the deed of gift of the land, moved either entirely or in part from the railroad company, and was not furnished by the defendants individually. Therefore it is charged that as to such land the defendants are trustees simply as regards the railroad company, and are bound to convey to said company these lands, of which they hold the legal title, but the consideration for the acquiring of which came either entirely or in part from the railroad company.

The facts were that these defendants had in charge the building of a railroad line through a new country, or were officers of the road, at all events, represented the road completely in its dealing with the people all along the line.

The people desired the railroad to develope and improve their property. The officers and agents of the railroad company represented that it was poor and needed all such donations of land and local aid of every kind as could possibly be obtained. Undoubtedly these were the inducements held out by the defendants in all of the cases described to secure the donations of land. That they were able to get the titles in their own names is not surprising considering that the people with whom they were treating were ignorant of such matters, and considering also that these men had the entire and visible control of the affairs of the railroad company, and as stated by several of the witnessses for the complainant below, were thought to be the company.

It is not necessary to go into any long statement of the facts in this case with regard to each separate parcel of land for the reason that the court in its decision below, after the examination of the testimony, found in favor of the complainant. A great mass of testimony was offered on both sides and it is more or less conflicting, but in the decision of the case which is reported in the Thirteenth American and English Railroad Cases, at page 70, Mr. Justice Harlan says the theory of the bill is "That the defendants, in view of their relations to the railroad company, at the time of the donations as well as at the time the various deeds were executed, were forbidden by the law to take the title to themselves; that taking the title to themselves under the circumstances discloses a fraud, as well upon the company as upon the grantors, and is in violation of the intentions of the donors. There is some conflict among the witnesses, but after a careful review of all the evidence, I find it impossible to resist the conclusion that all the transactions with the grantors, so far at least, as the defendants, Kelly and Ketchum are concerned, were had and concluded upon a basis of donations to the company. That impression the proof reasonably establishes, was intended by Kelly and Ketchum to be made upon the grant-

ors. That they used their relations to the company and its property to induce the grantors to believe that their donations were in effect to be for the benefit of the company. I do not think they should be allowed to hold title as against the company. Their doing so is forbidden by the plainest principles of public policy."

In view then of this explicit ruling upon the facts in the court below, it is not necessary to go into a further discussion here.

The lands described in the complaint are at various stations along the line of the road, and are of considerable extent and are of large money value. Their value can not be stated with accuracy, but that it is very large, is shown both by the proof and by the amount of the injunction bonds fixed by the court upon allowing the injunction against the defendants, preventing the conveyance of the lands pending the litigation, which bonds, are intended, of course, to cover only the damages which might be occasioned by the delay in sales of the land, the bond given to defendant Kelly for this purpose being in the sum of eighteen thousand dollars, that of the defendant Hiles eight thousand five hundred dollars, that of the defendant Ketchum five thousand dollars. (Page 558, Transcript of Record.)

The proof is then decided to establish clearly that the donors of these lands intended to give the same to the railroad company for the purpose of aiding it in constructing its railroad, and it is manifest that if the company had received the lands as intended, and sold them, it might have realized a large amount for the purposes intended. Instead of this the defendants took the title in their own names, immediately platted the lands and proceeded to sell the same upon their own account instead of for the benefit of the company, and continued to do this until restrained by injunction granted by the court below at the commencement of the suit.

The answers put in by the defendants amount substantially to a general denial of the allegations of the bill, and

an assertion of the rights of the defendants to acquire these lands for their own use and benefit.

It is also set up, on the part of Kelly, that he was acting as contractor and not as an officer of the railroad company at the time most of the lands were acquired. The court finds however, that the proof clearly establishes that Kelly was in such a position, with regard to the road, that he could not lawfully take the title to these lands in his own name, whether nominally an officer of the road or not.

2. Assignment of Errors.

The appellant contends that the court erred in rendering the decree which is found on page 411, of the transcript of record.

The part of the decree complained of reads as follows:

"This day came the parties by their counsel, and, on consideration of the pleadings and proofs in this cause and the arguments of counsel thereon, it is ordered, adjudged and decreed by the court that the complainant is entitled to recover from the defendants the title and possession of all such lands mentioned in the bill of complaint as are required by the railroad company for right of way, depot buildings, and other necessary railroad purposes, as described and limited in the charter of the company, and that the bill of complaint as to all other portions of the lands described therein be dismissed."

Appellant complains of this decree for several reasons:

First. Because the charter of the railroad company was a private act, and was not introduced in evidence, and the court can not take judicial notice of a private act.

Second. Because the question, whether or not the railroad company could take these lands so intended to be donated to it, is one which only the State can inquire into upon a proceeding by *quo warranto*, and such a question can not properly be raised upon a collateral issue of this kind.

Third. Because this decree allows the defendants to take advantage of their own wrong by continuing to hold

the title to a large quantity of land which the court has decided was intended to be conveyed to the railroad company, and to which then these defendants can have no individual right.

Complainant assigns as error also that part of the final decree which is found upon page 556 of the transcript of record, wherein it is ordered that the defendants Ketchum Hiles and the Arcadia Mineral Spring Company, convey to the railroad, certain lands therein described, only upon the condition that the railroad company shall pay for the improvements upon said lands, the value of which is found in said decree. Whereas the decree should have been for the absolute conveyance of such lands, because the lands were held properly to belong to the railroad company, and to be necessary for its use and the title thereto to have been fraudulently acquired by said last named defendants, and the improvements were put upon lands acquired fraudulently, and to which they have no title.

3. Argument.

First. The court can not take judicial notice of a private charter. It is charged in the bill of complaint in this case (transcript of record, page one) that the Green Bay and Minnesota Railroad Company, under the name of the Green Bay and Lake Pepin Railway, was duly incorporated by an act of the Legislature of Wisconsin, approved April 12, 1886, and that the name was subsequently changed according to law. This is admitted by the answers. The fact is thus not controverted, that the charter of the railroad company in this case was a private act. This charter was not introduced in evidence by either party, and does not appear in this transcript of record; neither was it pleaded by either party, nor did the defendants or either of them attempt in any way to assert or maintain any rights under it. The court then, of its own motion, took judicial notice of this charter and found that it did not authorize the taking of lands by this railroad company except for certain specified purposes.

These purposes are alluded to by Mr. Justice Harlan in his decision, reported in the 13th American and English Railroad Cases, above referred to, at page 71. He shows that by the charter the company is made capable of acquiring, for its legitimate use for railroad purposes, a fee simple in lands, tenements and easements in the same, and of conveying such interest or estate. That it is also authorized to take lands a hundred feet in width for right of way, and also such as is needed for depot buildings, stopping stages, station houses, freight houses, warehouses, engine houses, machine shops, factories, and for many other purposes connected with the use and management of the railroad. But the court says it was not authorized by its charter to take land for speculative or farming purposes, and for this reason, and this alone, the complainant's bill is dismissed, except as to such portions of the land described as are actually needed by the railroad for one or the other of the specified purposes.

That courts can not take judicial notice of private acts, is a very well settled rule of law, and amply supported by the authorities. Judge Brewer decided, in the case of the *Atchison, etc., R. R. Company* v. *Blackshire*, 10 Kansas, 477, that courts can not take judicial notice of private acts of the Legislature, and that inasmuch as the charter of the railroad company had not been pleaded nor proved in the case, it could not be considered at all. The case was similar in some ways to this one, and the principle involved is precisely the same.

In *Horn* v. *Chicago, etc., R. R. Co.*, 38 Wis. page 463, it is held that if a private statute or a local custom is relied on it must be pleaded. See also, on this last point, *Perry* v. *New Orleans, etc., R. R. Co.*, 55 Ala. 413. A still stronger case to the same effect is *Mandere* v. *Bousignore*, 28 La. Ann. page 415, where it is held that courts will not take judicial notice of the charter of a savings bank (it not being a general law) even for the purpose of sustaining the judgment of a court which took jurisdiction believing that the bank

was a corporation established by act of assembly. See also *Broadstreet Hotel Co.* v. *Weavers*, 57 Ala. page 26; *Chapman* v. *Colby*, 47 Mich. page 46; *Workingmen's Bank* v. *Converse*, 33 La. Ann. 963; *Hailer* v. *State*, 9 Tex. App. 170.

Secondly: But secondly, even if the charter of the road had been either pleaded or proved, or if the court could have properly taken judicial notice of it, nevertheless, the finding of the court in this case, that the company could only take such lands as were needed for railroad purposes, is clearly wrong for another reason, viz.: that the State alone by a proceeding of *quo warranto* has any right to inquire into such a question. This is a principle of law supported by many decided cases, and it is one which is reasonable and right, and could hardly be better illustrated than in a case like this. This is a suit to take away from those who have fraudulently and unlawfully acquired them, certain lands which were intended to be given to this railroad corporation. Then why should the court step out of the record and invoke some principle of want of power to take, in the corporation under its charter, to protect those whom it is held were guilty of fraudulent dealings in this matter, with the result of such a decision, leaving these wrong-doers in possession of the lands which they obtained by fraud, and which the court holds they have no shadow of right to, but which the real owners, who must be the original grantors, if the corporation can not hold the land could not recover, at least without litigation more or less cumbrous and expensive. Clearly the result of the court's decision is a manifest injustice to the railroad company; also to those who intended to benefit the railroad company by giving it lands. But the only persons benefitted by the decision are those whom the court holds in the same opinion to be guilty of fraud and to have no right whatever to any benefit from such lands. Such a result is deplorable, and the principle of law which can bring it about must certainly be a very strong one and very clearly sustained by the authorities, if it is to be held to apply in such a case. The reverse seems to be true, for

the decided cases establish a contrary principle to the one followed by the court below. It seems that the authority of the case of the *National Bank* v. *Mathews*, 98 U. S., page 621, should be sufficient to decide this question, and to decide it in favor of the appellant. For it is hard to see how an authority could be more explicit upon this point. The case was one of a bank which had taken a note of a party secured by a deed of trust as security for a loan of fifteen thousand dollars. As the loan was not paid at maturity, the bank directed the trustee to sell, and a bill was filed thereupon to enjoin the sale, upon the ground that the loan being made upon real estate security, was forbidden to the bank by law, and that the deed of trust was therefore void. The ground of the contention against the validity of the deed of trust was, that the bank was only allowed under the law of its incorporation to hold real estate for certain specified purposes, of which this was not one. The question presented then is nearly identical with the one in the case at bar. For, here the learned judge deciding the case below says, "That the company is only authorized to take land for certain specified purposes, which he names, and to take it for farming or speculative purposes, not being one of those enumerated, makes the conveyance to the company void." It would be hard to find two cases more alike. The Supreme Court says upon page 628 in the case of the *National Bank* v. *Mathews*, "Where a corporation is incompetent by its charter to take a title to real estate, a conveyance to it is not void, but only voidable and the sovereign alone can object. It is valid until assailed in a direct proceeding instituted for that purpose." The court then speaks of the case of *Leazure* v. *Hillegas*, 7 Serg. & R. (Penn.) 313, and says that it is elaborate and exhaustive upon the subject. And this authority is adopted by the Supreme Court as its own rule.

Also it is difficult to see how Mr. Justice Harlan avoided the application of the case of *National Bank* v. *Matthews* in his opinion above referred to in the 13 American and English Railroad Cases, where he says that the cases are not

similar, because in the bank case the conveyance was made direct to the bank, whereas in this case the conveyance was not made direct to the railroad company, but the complainant is seeking the aid of a court of equity to get the conveyance made to the railroad, and the court therefore says, that equity will not assist a corporation in getting lands, which it has no charter right to hold. This is certainly a distinction without a difference between these two cases. The court itself holds that the conveyance to the defendants, Kelly and Ketchum was not intended to be a conveyance to them as individuals but was intended to be a conveyance direct to the railroad company. Is it not a maxim of equity, that equity will regard as done what was intended to be done? If then the intention of the parties was, as it is declared by the court to have been, to convey direct to the railroad company, how can it be denied that these conveyances are direct conveyances to the railroad company. It is true that through fraud other names have been inserted in the deeds, but the court has brushed aside this fraud, and has brought out the real meaning and intention of the parties, as it was bound to do so soon as discovered by proof. So that the conveyances stand now as being really conveyances to the railroad company to all intents and purposes.

To hold as Mr. Justice Harlan holds upon this position, would be to admit a right in these defendants of some kind in the title to these lands, because, as the court says, the complainant is asking a court of equity to decree a conveyance from these parties. This is not actually what is asked by the bill, though it may be so *literally*. The only need of a conveyance from these parties to the road is to make the title clear. The defendants, according to the court's own decision, have no rights in the lands. What is really asked by the bill is, that the court shall declare by its decree what the actual interest in the lands is, and if it holds that the actual beneficial interest under the conveyance is in the railroad company, it will also decree a conveyance to be made by the defendants, not because of their having any

interest in the lands, but in order to remove any cloud upon the title of the complainant. In other words, complainant is not asking an original conveyance to it of any lands, but is simply asking the court to give it its own lands, and the court has decreed that these lands are its own.

It is not necessary, then, to seek any further authorities, for this court has announced its own rule in such a case, and has quoted and given the sanction of its own authority to the case of *Leazure* v. *Hillegas*, 7 Sarg. & R. (Pa.) 313, and the others cited in *National Bank* v. *Matthews*, which are as follows:

Coundie v. *Northampton Water Co.*, 7 Pa. St. 233.
Runyon v. *Coster*, 14 Pet. 123.
The Banks v. *Poitiaux*, 3 Rand (Va.) 136.
McIndoe v. *The City of St. Louis*, 10 Mo. 577.
Gold Mining Co. v. *National Bank*, 96 U. S. 640.

The only question then is, whether the rule applies to the case at bar. Unless some valid distinction can be made the rule announced in *National Bank* v. *Matthews*, covers this case and establishes the proposition contended for by the complainant, that an inquiry into the charter rights of the railroad company to hold land was out of place in this proceeding. And when it is further remembered that the charter of this company was not before the court, and being a private act, could not come within the court's judicial notice, it will become still more difficult to find any ground upon which to sustain the decision of the court below.

Thirdly: Another aspect of the case presents itself, which will throw, perhaps, some light upon the question as to whether there is any valid distinction between this case and that of *National Bank* v. *Matthews*. The decision of the court makes the defendants trustees for the railroad company, and distinctly declares that they have, in law or equity, no right whatever in these lands, except that they hold the legal title by reason of their own fraud, and therefore hold it in trust for another. If they are trustees and have no right of beneficial use in this property, why should

the court leave them in possession of any part of it? The title to it all is tainted by the same fraud in the aquisition of it, and the defendants have no more right in one part of it than in another. The consideration for the whole of it came from the railroad company, and it was because of advantages to be gained from the railroad company, that the grantors parted with their lands, and also for the further reason of helping the railroad company. There was no intention to benefit these defendants individually, on the contrary such a position is even contemptuously disclaimed by several of the witnesses of the complainant, one or two of whom, very naturally say: "Why should we give lands to Mr. Kelly or Mr. Ketchum? We supposed we were giving it to the railroad company."

If this court should affirm the decree of the court below, it would follow that the injunction would be immediately dissolved, which prevents these defendants from disposing of these lands in question, and they having the naked legal title, could proceed immediately to sell the same, and once in the hands of innocent purchasers, they would be beyond all reach of recovery by the lawful owners. Ought such a result to follow in this case? Is there any legal principle upon which the rights of the defendants in one part of this fraudulently acquired property, should be separated from their rights in any other part of it? They are trustees for the whole of it, and trustees for the benefit of the party to whom the lands were intended to be given. Surely the court will not allow the defendants to be advantaged by that which it has declared to be their own wrong. If the State shall not choose to allow this railroad company to hold the title to these lands which have been given it for its assistance and its use, there is nothing to prevent the State from stepping in at any time with its *quo warranto*, declaring void the title of the railroad company and restoring the lands to the rightful owners. But until the State does so interfere, there is no rightful owner of these lands except the railroad company,

and surely as against these defendants tainted with fraud, the title of the railroad company is incontestable.

Fourthly:—And the latest error assigned is, that the final decree directs the conveyance of the lands to the railroad company by Hiles and the Arcadia Mineral Spring Co. only upon payment by the railroad company of the amount found to be the value of the improvements upon said lands. It will be observed that the interlocutory decree which is complained of, and which has been hitherto wholly discussed in this brief, made it necessary for the court to appoint a master to determine what lands were necessary for railroad uses and set these apart from the other lands. This master was appointed and a large part of the transcript of the Record is made up of the testimony taken by him in determining the amount and location of the lands needed by the railroad company at the various stations. Many exceptions were taken to the master's ruling on various points, but it is not expected that this court will examine into these except where some legal principle is involved as in the case complained of and about to be discussed. This master after hearing testimony held, that the land at Arcadia which had been used by George Hiles and the Arcadia Mineral Spring Co. and Henry Ketchum, was needed in large part for railroad purposes, and hence even under the interlocutory order of the court, belongs absolutely to the railroad company. None of the defendants had or ever did have, under the decision of the court, any title whatever in these lands, and it is plainly to be deduced from the testimony and the courts opinion that the inception of the title and the holding of it by these defendants was a fraud upon the railroad company. Now upon these lands which the commissioners hold to be necesssary for the railroad use, are placed improvements of a certain value found by the master, and which were put there by the defendants or one or the other of them. The court holds that the railroad company cannot have its own land without paying for these improvements. Upon what principle of law

can such a finding be justified? These improvements have, of course, become a part of the realty, the title to which the court has found to be in the railroad company. Upon what principle of equity is the railroad company bound to pay for these improvements which already belonged to it by virtue of their attachment to the land? Surely it can not be said that they were put there innocently by the defendants, for the court has already held that the defendants were only there at all by virtue of a fraud and that a deliberate one, practiced as well upon the railroad company as upon the donors of the land. Is this finding of the court consistent with its other holding, that the railroad company shall only be allowed to take what its charter would permit it to hold? Is there any thing in its charter permiting it to buy and hold a hotel? One of these improvements is a large brick hotel. Will the court in one breath say the railroad company shall not have the lands intended to be given it, because of the charter inability to take them, and in another say that it must buy a brick hotel which has been put upon its own lands by one who is holding title to that land through fraud, before the court will allow it to take the title to its own property? This is clearly an error. The decree should have been for the conveyance to the railroad company of that which the commissioners, under the direction of the court, found it was entitled to for its use. The general principle that a trustee who holds land in fraud of the *cestui que trust* is not entitled to pay for improvements put by him upon the lands under such conditions is a familiar one. It is supported by the case of *Thompson* v. *Thompson*, 16 Wis. 91, where the court in its decision, says: "As a general rule a party who wrongfully retains a title which he knows he ought to convey to another, is not in a position to claim pay for improvements. That claim belongs to those who improve in good faith, believing that their title is good." And the court in that case refused to allow any compensation for improvements to the party who had wrongfully retained the title to the

land as against the one who had furnished the money for its purchase. This seems to be precisely the case at bar.

The general proposition that a claim for improvements, on the part of trustees, belongs to those who improve in good faith, believing their title is good, is laid down in 1 Story Equity, sections 779 and 1237, and a note thereto, and quite elaborately discussed. Good faith in possession is the absolute essential condition to any claim for improvements on the part of the trustee. To the same effect is the case of *Watterman* v. *Dutton*, 6 Wis. page 265. This was a case where the court corrected a mistake in a contract, and made it correspond with the real intent and meaning of the parties and then decreed its specific performance. It was held that the parties who were in possession of the land in question were wrongfully there and not entitled to the possession after the correction of the mistake in the instrument, it not being intended by the parties in the beginning that they should have possession. After deciding this matter, the court considers the question of valuable improvements made upon the property by the defendants while wrongfully in possession. The court says on page 276: "They were in possession in their own wrong, and if they made improvements upon the property to render the use thereof more valuable to them, or because they fancied such improvements were necessary for the protection and preservation of it, they ought not to be compensated for any such improvements." This decision is directly in point. Mr. Hiles and the Arcadia Mineral Spring Company were in possession in their own wrong, and they made improvements upon the property to render its use more valuable to them; they consequently have no claim to compensation for the improvements. The same doctrine is laid down in the case of *Gillespie* v. *Moon*, 2 Johnson's Chancery, page 585. This was a case of conveyance of two hundred and fifty acres of land by mistake when it was only intended to convey two hundred acres. Most of the case is directed toward the question whether this mistake could be corrected by parol

vidence, the mistake being denied in the answer. Then having decided that the mistake could be corrected, he court holds that the defendant has no equitable claim for compensation for his improvements made upon the fifty acres so conveyed contrary to the grantor's intention. The improvements the court says, on page 602, "were made by him after he knew the mistake and had declared his intention to take advantage of it, and fraudulently carried that intention into effect. Such an allowance would be confounding all moral distinctions, and be giving countenance and sanction te the most flagrant injustice." The authorities are then amply sufficient for the support of the proposition that one who is wrongfully in possession can make no claim for compensation for improvements as against the *cestui que trust*. There is not, so far as I am able to find, a single decided case which holds such a doctrine. It must always be borne carefully in mind in considering this case and all the questions involved in it, that the decision of the court below upon the testimony is, that these defendants were guilty of fraud in obtaining title to these lands and in retaining it as against the complainant. This fact surely should debar the defendants from any hearing in a court of equity upon such a question as this. It is a much stronger case than one of mistake, where the parties are innocent, and yet in such a case there has been considerable discussion of the question, but it has never been discussed to any great extent where the parties were fraudulently in possession.

These are all the points which the appellant has assigned as error.

We subjoin a few additional authorities upon all of the points raised upon this appeal.

In *Leland* v. *Wilkinson*, 6 Pet. 317, Chief Justice Marshall says: "The public laws of a State may, without question, be read in this court; and the exercise of any authority which they contain, may be deduced historically from them; but private laws and special proceedings * * *

are governed by a different rule. They are matters of fact, to be proved as such in the ordinary manner. (This court can not go into an inquiry as to the existence of such facts upon a writ of error, if they are not found on the record.)"

Courts do not take judicial cognizance of special acts of the legislature.

Hailes v. *State*, 9 Tex. Ap. 170.

It is an elementary principle that a judgment or decree must conform to the allegations in the pleadings, as well as to the proofs.

Crocket v. *Lee*, 7 Wheat. 522.
Vattier v. *Hinde*, 7 Pet. 252.

In the present case there was no allegation in any of the pleadings as to the power of the railway company to hold the lands in question. That point was not in issue, and no evidence was offered thereon by either side. The question was whether the defendants had a better right to the title than the railway company. The court below decided in favor of the latter. Yet it went entirely outside of the case to ascertain whether, even in the event of the company being equitably entitled to the lands, it could lawfully hold them under its charter.

The court was not called upon to decide that question. After having concluded that all the transactions the grantors had with the defendants were conducted and completed upon a basis of donations to the company, it should have stopped there and moulded its decree accordingly. The ultimate question of deciding whether the company could lawfully return the land or not, belonged to another tribunal.

On the second point the following cases might be cited:

In *Cowell* v. *Springs Co.*, 100 U. S. 56, it is expressly held, that when a corporation is authorized by statute to hold real property necessary to enable it to carry on its business, the inquiry whether any particular real property is necessary for that business is a matter between the State and cor-

poration, which does not concern third parties. Mr. Justice Field says (p. 60): "It would create great inconveniences "and embarrassments if, in actions by corporations to re- "cover the possession of their real property, an investiga- "tion was permitted into the necessity of such property for "the purposes of their incorporation, and the title made to "rest upon the proof of that necessity." Citing *Natoma Water & Mining Co.* v. *Clarkin*, 14 Cal. 552.

Christian v. *Young*, 101 U. S. at page 361, holds the same position.

Smith v. *Sheeley* 12 Wall. 358, raises the same point. Justice Davis, at page 361, says:

"It is insisted, however, as an additional ground of objec- "tion to this deed, that the bank was not a competent grantee "to receive title; it is not denied that the bank was duly or- "ganized in pursuance of the provisions of an act of the "legislature of the Territory of Nebraska, but, it is said it "had no right to transact business until the charter creat- "ing it, was approved by Congress. This is so, and it could "not legally exercise its powers until this approval was ob- "tained, but this defect in its constitution can not be taken "advantage of collaterally. No proposition is more thor- "oughly settled than this, and it is unnecessary to refer to "authorities to support it."

The third point will certainly be conceded.

As to the fourth point, referring to whether defendants are entitled to compensation for improvements or not, the the rule at civil law was that the possessor of property of another who had erected buildings or made other improvements thereon, supposing himself to be the owner, was entitled to payment for such improvements, after deducting from the value thereof a fair compensation for the rents or use of the property during the time he occupied it (Rutherf. Inst. 71); and this principle was early adopted by the English Court of Chancery, and has prevailed to the present, but with much restriction in its application. In all the cases the elements of good faith and innocent mistake

are necessary; for if a person lays out money on another's property, with *knowledge or notice of the true state of the title*, he has no claim to be reimbursed.

3 Pomeroy Eq. Jur., Sec. 1241, note.
Rennie v. *Young*, 2 DeG. & J. 136.
Dart v. *Hercules*, 77 Ill. 446.
Cannon v. *Copeland*, 113 Ala. 252.

The following authorities also hold that a purchaser with notice is not entitled to compensation for improvements:

2 Story Eq. Jur., Sec. 1237.
Davidson v. *Barclay*, 51 Penn. St. 406.
Cook v. *Craft*, 3 Lans. 512.
Rainsden v. *Dyson*, L. R. 115 L. 129.

The ground upon which this rule rests is that to allow compensation in such cases would be to virtually compel the true owner to make the improvements and pay for them whether he consented to it or not.

These are all the points which the appellant has assigned as error, and we now respectfully submit the case to your Honors.

WALTER C. LARNED,
Solicitor for Appellant.

HUBBARD B. TURNER,
Counsel for Appellant.

JAN 3 1888

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1887.

NO. 147.

TIMOTHY CASE, RECEIVER OF THE GREEN BAY & MINNESOTA RAILROAD COMPANY.
Appellant,
vs.
D. M. KELLY, GEORGE HILES, ET AL.,
Appellees.

Appeal from the Circuit Court of the United States for the Eastern District of Wisconsin.

Answer to Argument on Behalf of George Hiles, Appellee.

WALTER C. LARNED,
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Answer to Argument on Behalf of George Hiles, Appellee.

The attorney for Hiles, appellee, makes a point that there is no use in considering as to defendant Hiles the same questions which affect defendants Kelly and Ketchum, for the reason that Hiles offered to convey to the railroad company, by proper deeds, all right of way, depot grounds and land for other railroad purposes, covering land the title to which was, in whole or in part, in him, reserving, however, any claim he had for improvements or for money paid on the original purchase. The answer to this position is sufficiently obvious. Hiles owned or had the title to a great deal more land than he offered to convey to the railroad

company, and it is claimed by the appellant that he had no more right to hold this land than had the others.

The reason the question was not considered in the court below was because the court adopted the very rule complained of, and upon which this appeal was taken, namely, that the railroad company was not entitled to take any more land than its charter allowed; hence, when Hiles offered to convey in accordance with the rule laid down by the court, there was no need for the court below to further consider his case, but he is manifestly affected by the same principle which affected the others, and if this court shall hold that such a rule was not proper in this case, there will have to be a reconsideration of Hiles' case, and a determination will have to be reached as to whether he is entitled to hold the other lands beside those which he offers to convey to the railroad company. That question can not be decided upon this record, but if the court here holds there was error in the rule adopted in the court below, Hiles should not be permitted to escape an application of the law to his case, because he made an offer to convey which the railroad company did not accept, but which was held sufficient to stop further proceedings against him by the court below, under the erroneous rule adopted by it.

The attorney for Hiles then goes on to argue that the charter of this railroad company was not a private but a public act. It is admitted, of course, that the charter was really a private act. The railroad was not incorporated under a general law, but under a special charter. The only point made is that the clause was inserted at the end of the charter that it should be considered a public act. This clearly does not alter its nature. It was set up in the plea and admitted in the answer that the corporation was incor-

porated under a special act, a private act, and there is nothing in the pleadings or the proof to show the contrary. The act, whether public or private, was not pleaded or relied upon by either party, and was not brought into the case by way of evidence by any party to the suit, nor was any point raised upon it in any way during the entire proceedings, as is apparent from the examination of the record. During the proceedings the judge simply called for the charter of the company, and examined it before rendering his opinion, and this is all the connection the charter had with the case. So far as this record is concerned, the charter is not in the case at all.

I contend that it was error to bring into the case that which made no part of the issue raised by the record, between the contending parties. It is true that some of the authorities cited by Mr. Noyes, contain intimations to the effect that words like these at the end of the charter, declare it to be a public act and make it proper for courts to take judicial notice of that which is really a private act in its essence, but in none of these cases cited by him is there any well considered discussion upon this matter, and the facts in them all are entirely different from those in the case at bar.

The case in the 12 Mich., *People* v. *Ry. Co.*, which is principally relied upon as establishing such position, was founded upon a totally different set of facts. In that case the railroad company set up its charter by plea, and hence the charter, whether private or public, was properly before the court. In the case of *People* v. *Ottawa Hydraulic Co.*, in the 115 Ill. 281, the sole question was upon the charter of the company, as the case was in the nature of a *quo warranto*. The court in this case holds that it is not necessary

to plead a public law, and in that respect, that is as to *pleading it*, there is no difference between a public law, strictly so called, and one merely declared to be so by the Legislature. The whole question in the case last quoted turns upon the charter of the company, whether it had been forfeited by the company's engaging in acts not contemplated by its charter, and the court held that an act passed subsequently to its charter, and before its charter had been forfeited by the State, which latter act gave it enlarged powers sufficient to support the title of the company to its purchases and prevent a judgment of ouster, waived all rights of forfeiture of the previous charter. And the question was whether the act of 1853 should have been pleaded. The court held that in that case it was not necessary. It is sufficiently obvious not only that the facts and circumstances of this case are entirely different from those in the case at bar, but also, that the decision of the court upon a question of pleading, solely, has no application here, because it is set up by the complaint and admitted by the answer that the charter was a special act and no proof is offered to the contrary. In none of the authorities cited, is there any general discussion of the point whether an act that is really a private act can be made by a mere clause declaring it to be public, such an act as courts are bound to take judicial notice of.

I have found no such authority, and this case is very much stronger even than such a proposition as this, because there is absolutely nothing upon record and was nothing in the proceedings from the beginning to the end which brought the charter of this road into the case at all, except the one allegation that the road was a private corporation, and was specially incorporated, which is admitted

upon the face of the pleadings, and is the only information which the court had upon the subject. As has before been said, the only question is whether the declaration at the end of the charter as to its being a public act is so conclusive as to make it obligatory upon the judge to send for such an act of his own motion when neither of the parties have brought it into court or relied upon it in any way.

As for the second point in the brief for Hiles, it is no answer to the point made that the case of *National Bank* v. *Matthews* covers this case. The plaintiff was not asking the court to give him a title to real estate, but simply to remove a cloud upon the title to the real estate which the court held was already his.

The attorney for Hiles says that the case of *National Bank* v. *Matthews* went upon the ground that a corporation having for a valuable consideration and in good faith, acquired title to property which strictly, under the terms of its charter, it could not take and hold, can not be defeated in the enforcement of such title by a party who has received full benefit from the transaction under or through which such corporation acquired its title. This is exactly this case.

A valuable consideration was paid for all of this property which the appellant claims, the consideration was the location of the railroad depots which the parties desired and considered a sufficient consideration for the donation of their lands to the company, and this was the actual transaction except for the fraud of the defendant in taking the title in another name. They have under the decision of the court, no more right in the property than any stranger, and why should the court bring in here the charter of the railroad company and thus try to invest with title, indefeasible title perhaps, in these lands, men who are ad-

mitted to have gotten possession of them by fraud? Surely it is better to let the company have its own unless the State chooses to interfere which it may or may not do. Whether it does or not, has nothing to do with this present issue and is not proper to be decided here upon the state of this record.

WALTER C. LARNED,
HERBERT B. TURNER,
Sol'rs for Appellant.

In Supreme Court of the United States.

OCTOBER TERM A. D. 1887.

No. 147.

TIMOTHY CASE, Receiver Green Bay & Minnesota Railroad Company,
Appellant,

vs.

GEORGE HILES, Impleaded with others,
Appellee.

Appeal from the Circuit Court of the United States for the Eastern District of Wisconsin.

BRIEF FOR GEORGE HILES, APPELLEE.

STATEMENT OF THE CASE.

The Appellee Hiles was interested in lands at two localities only, to-wit: at Blair and Arcadia. He was at no time a director, officer or agent of, or otherwise officially connected with, the Railroad Company. (Transcript—pages 153, 215, 221.) His only business relations with the company were as sub-contractor in the "bridging, grading and tying" during portions of the years 1872 and 1873 of about 100 miles of its road. (Transcript, 160, 207, 215, 221, 401.) Neither Kelly

nor Ketchum were partners with him or had any interest of any kind in his contracts of construction or the profits from the same. (Transcript, 112, 207, 215). On or about July 20, 1873, Hiles purchased jointly with Kelly and Ketchum of one Briggs, 187 acres of land at Arcadia, paying therefor $500 in cash. On or about October 20, 1875, long after Hiles had finished the work of construction under his contracts, he purchased with Ketchum of Briggs, an additional 10 acres at Arcadia, paying $300 in an exchange of some of the original lands for these 10 acres. And on this 10 acre tract he subsequently built the improvements, the value of which was allowed him by the decree of the court below. The price paid for these lands of Briggs "was every dollar they were worth at the time and more." (Transcript, 208, 216, 217, 218, 343, 348, 534, 535, and map of Arcadia).

The complainant was present at least twice when Hiles was putting on some of the improvements on the land, and made no objection thereto and has never made any. On the other hand the complainant assisted or advised with Hiles with reference to the construction of one of the buildings, and "was perfectly satisfied with its being there." (Transcript, 311).

In August 1873, after the location and grading of the road at Blair, Hiles with Ketchum agreed with Porter and Thurston, owners of land at that point, that in consideration of forty acres of land from each, they would lay out a portion of it into town lots and establish a lumber yard and help build up a town at a point that would benefit such land owners. And this was done. (Transcript, 197, 198, 203, 204, 220, 221).

Hiles, in his answer and in his testimony, offered to convey to the Company any lands of his required by it, if there were any such not already conveyed. (Transcript, 17–219). Such offer was repeated upon the hearing, with the provision that he be paid for any improvements made upon the lands

so to be conveyed. (See opinion of Justice Harlan, 13 Am. and Eng. R. R. cases 70).

The decree, in respect to him, was made in the court below upon grounds entirely different from those upon which it passed as against the defendants Kelly and Ketchum. This was necessarily so because Hiles was not in any way connected in a fiduciary relation with the railroad company. He was not therefore adjudged a trustee. At the time of acquiring his interest in the lands at Blair he was simply, and at no time more than a sub-contractor for the construction of a part of the rail road. At the time of acquiring the lands at Arcadia, upon which his improvements were made, he had completed his contract. He occupied, therefore, no such relation to the company as would make him liable as trustee in this suit. This is plainly recognized in the opinion of Justice Harlan reported in 13 Am. and Eng. Railroad Cases, 70. As respects Kelly and Ketchum, it is there said: "I do not think they should be allowed to hold title as against the company; their doing so is forbidden by the plainest principles of public policy." As respects the defendant Hiles, later in the opinion it is said: "whether the defendant Hiles was deterred by any relation, which he held to the company, from taking title for himself to any of these lands, we have not found it necessary to consider. Upon the argument in this case we understood his counsel to announce that he had already executed or would execute proper deeds to cover right of way, depot grounds and land for other railroad purposes covering land, the title to which was in whole or part in him, reserving, however any claim he had for improvements or for money paid on the original purchase." With respect to his right to the value of the improvements placed upon the land at Arcadia, the opinion proceeds: "The determination of that question is reserved until the coming in of the masters' re-

port, when the court will be better advised, than it now is, as to the facts connected with such expenditures."

It will thus be seen that the questions for consideration by this court are entirely different in the case as presented against the defendant Hiles from those presented against the defendants Kelly and Ketchum. This court will not pass upon any question not presented, considered and passed upon, in the court below, nor will it disturb the decree below on a question of fact if the testimony will justify its support.

The decree directing the defendant Hiles, to convey to the receiver any additional grounds which he had not already conveyed to the railroad company for its purposes, was made, not on the ground of his fiduciary relation to the railroad company so as to charge him constructively as a trustee, holding the legal title for its benefit, but solely on the ground of the offer made by his counsel that he would execute proper deeds for such land as the railroad company required for its purposes, provided he should be paid for the improvements which he had placed upon them.

The only question, therefore, for determination here, is whether, as disclosed by the testimony in the record, that part of the decree of the court was justified, which ordered that the lands covered by such improvements be conveyed by defendant Hiles to the Receiver, upon payment to him of the value thereof as found by the master, in case the complainant should elect to take and pay for such improvements, or in case the complainant should not so elect, then that the defendant Hiles should be allowed all necessary ingress and egress to and from such buildings, over the property of the company in their vicinity. (Transcript, 556).

The consideration of this question eliminates, all discussion on behalf of the defendant Hiles, of the greater part of what may be involved in the questions affecting the interests of the other defendants, Kelly and Ketchum. It eliminates any discussion of the duties and obligations of the defend-

ant Hiles if found a trustee holding title to any lands on behalf of the railroad company; as to what his rights and duties would be in case of having acquired the property or having made improvements thereon in actual or constructive fraud of the rights of complainant; as to whether he should be entitled to the value of his improvements upon the property which the court decrees to the complainant pursuant to the offer of his counsel; and generally as to the questions discussed by appellant's counsel on the assignments of error in his printed brief. It may be well, however, to allude separately and in their order to the three assignments of error therein specified.

ARGUMENT.

I.

The charter of the railroad company was not a *private*, but a *public* act of which the court below could take judicial notice. Section 14 of the act was in these words. "This act is hereby declared to be a public act and shall take effect and be in force from and after its passage and publication." (Laws Wis. 1866, ch. 540). "It is a fundamental mistake to suppose that it is ever necessary to plead a public law; and there is no difference in this respect between a public law strictly so called, and one merely declared to be so by the legislature. Sometimes such a law as a mere matter of composition is specially pleaded, particularly in chancery proceedings; but there is no rule of law requiring it, and in proceedings at law it is regarded violative of the principles of good pleading."

People Ex. Rel vs. Ottawa Hydraulic Co., 115, Ill. 281, (10 Am. Cor. Cases 279).

"Wherever a law of the state is held to be a public one, to be judicially taken notice of by the state courts, it must be regarded in like manner by a court of the United States, when it is required to administer the laws of the state.

Covington Draw Bridge Co. vs. Shepherd, 20 How. 227, 232.

Ry Co. vs. Bank of Ashland, 12 Wal. 226.

In People vs. Ry Co., 12 Mich. 389, in speaking of the charter of the defendant railroad company, the court say:

"This is declared to be a public law, and being so, we are bound to take judicial notice of it and to disregard all allegations in conflict with it." Page 397.

But the charter of the railroad company was sufficiently pleaded in the bill of complaint and such allegations were admitted in the answer. Rev. Stat. Wis. § § 2676, 3205. Being so pleaded and admitted, if such charter were a private statute, the court would take judicial notice of its provisions. But under the rule announced, and for the reasons given in the following Wisconsin cases, the charter in question would be considered a public act of which the court would take judicial notice.

State vs. Lean, 9 Wis. 279.
Clark vs. Janesville, 10 Wis. 136.
Rochester vs. Bank, 13 Wis. 432.
Castello vs. Landwehr, 28 Wis. 522.

II.

Inasmuch as the decree of the court below, as against the defendant Hiles, did not proceed upon taking the land to which he held title because it belonged to the railroad com-

pany as a donation to it from the grantors and because the defendant was a trustee with respect to it, but solely on the ground of the offer of counsel to convey, it is not necessary to consider at length the question discussed under the second assignment of error, and whether or not the case at bar should be controlled by National Bank vs. Matthews, 98 U. S. 621.

If it were necessary, however, for us to consider this question it would not be difficult to point out the difference which his Honor, Justice Harlan, alluded to in giving his opinion. The case of National Bank vs. Matthews, and the decisions referred to in the opinion in such case went upon the theory that a corporation, having for a valuable consideration and in good faith acquired title to property, which strictly under the terms of its charter it could not take and hold, cannot be defeated in the enforcement of such title by a party who has received full benefit from the transaction under or through which such corporation acquired its title; and furthermore that "the impending danger of a judgment of ouster and dissolution at the suit of the sovereignty," is a sufficient check to prevent a corporation from wantonly violating its charter, by taking title to property which it has no authority thereunder to take and hold. Here, however, the question may be stated thus: Will a court of equity lend its aid in passing the title of real estate to a corporation, which real estate under its charter it could not take and hold, and thereby cause, or at least aid in, the wanton violation of such charter so that the state would be authorized to punish the corporation by a judgment of ouster and dissolution? We venture to say that such a request has never before been made of a court of equity. The company under its charter could not purchase, receive or hold, nor could it take by eminent domain, lands for speculative purposes or for any other than railroad purposes.

In re R. R. vs. Davis, 43 N. Y. 137.

The court below was right in refusing to decree to it lands that it otherwise had no power to obtain, or if, and when obtained it would be subject on that account to forfeiture of its charter.

III.

The defendant Hiles is the only party interested under the decree in the question of the payment for improvements. The improvements consisted of a hotel building worth $4,500, a brick building worth $2,500, and lumber sheds worth $250. All these were constructed upon a part of the ten acres purchased by Hiles in 1875, for which he paid full consideration. The land upon which they were made was ordered to be conveyed to the company by the interlocutory decree, pursuant to his offer, upon payment of the value of such improvements. This the court, upon final hearing, decreed to be done, or if the complainant should elect not to take and pay for such improvements, he was allowed to keep the same, having the right of ingress and egress over the railroad land surrounding the buildings. The question discussed by the apellant's counsel in his brief, as to whether a trustee holding lands in fraud of his *cestui que trust* is entitled to pay for his improvements when directed to convey the title, is not therefore a question upon this record. But assuming this question in the case, it does not follow that the authorities cited are applicable to the facts presented by the record as respects the defendant Hiles. The true distinction is, that a person making improvements upon land in good faith, supposing that he owns it, must be paid therefor, in case his title fails or is taken from him by reason of the doctrine of constructive trusts. It is only in case of *actual fraud* or bad faith that the court punishes a party by the loss of his improvements. This case was brought upon the theory that the defendants

were trustees of the railroad company, and any title acquired by them enured to the benefit of the railroad company as the *cestui que trust.* Such a trust would be what is termed in the law "constructive." The property would be decreed to such *cestui que trust* without regard to any question of actual fraud. In such a case the party holding the title, as trustee, is allowed his improvements. "The trustee will have all just allowances made to him for his improvements and repairs which are substantial and lasting or such as have a tendency to bring the estate to a better sale."

Lewin on Trusts, 444.
Cook vs. Berlin Woolen Mills Co., 56 Wis. 643.
Id. vs. Id., 43 Wis. 433.
Benson vs. Cutler, 53 Wis. 107.
Hadley vs. Stewart, 65 Wis. 481, 6.
Blodgett vs. Hitt, 29 Wis. 169.
Green vs. Dixon, 9 Wis. 532.

"If it shall be made to appear that, upon a sale of the property, the amount received is greater than it would have been had no improvements been made, the trustee, who has been guilty of no fraudulent design in making the improvements, may be allowed to retain the excess."

Pratt vs. Thornton, 28 Maine 355. (48 Am. Dec. P. 498).
Spindler vs. Atkinson, 3 Md. 409.
Perry on Trusts, Sections 206, 207.

It appears from the testimony that Hiles made these improvements in good faith, without any notice of the claims of the complainant or the railroad company, supposing that he